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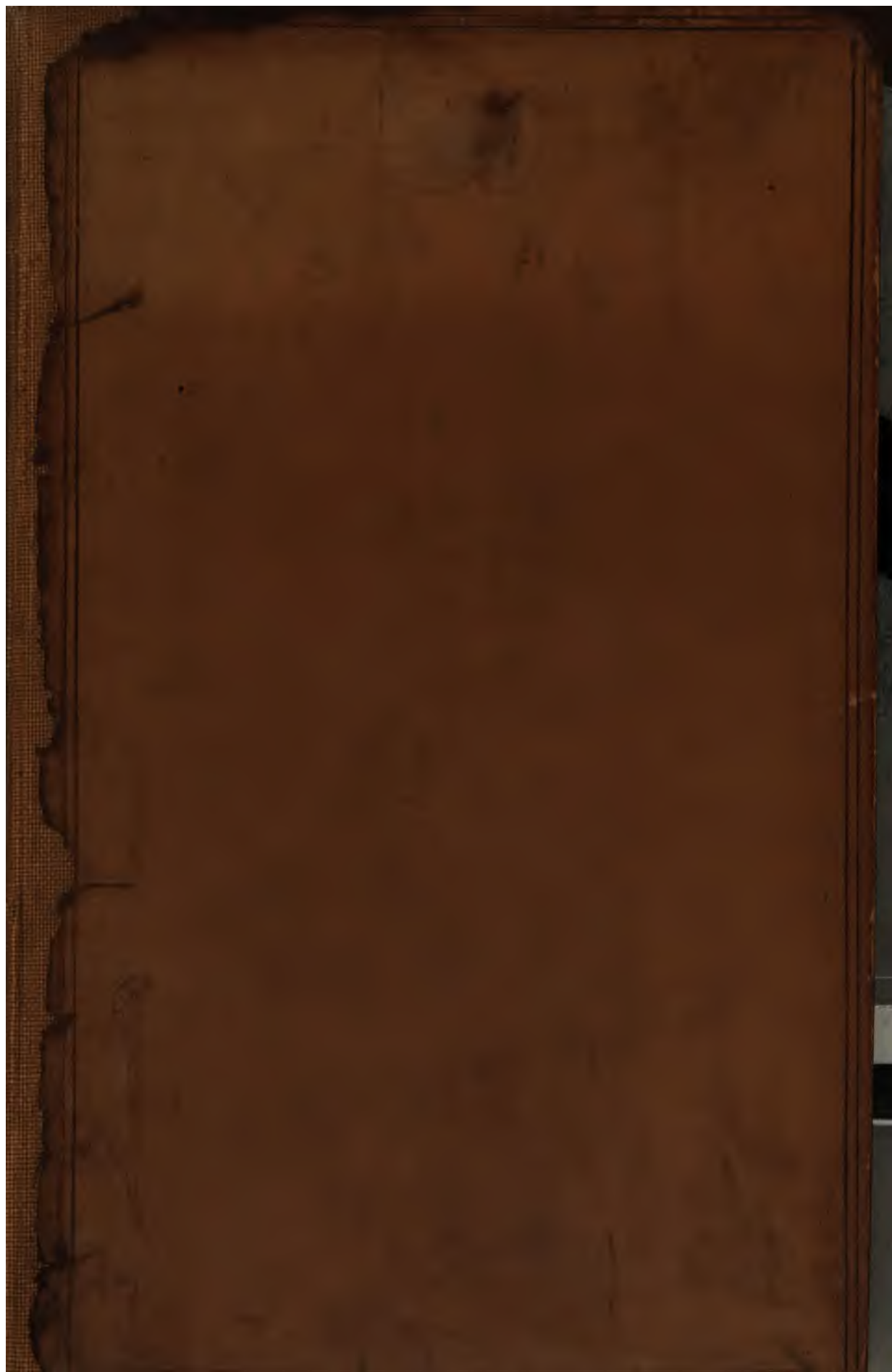
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REPORTS OF CASES

ARGUED AND DETERMINED

IN

THE COURT OF COMMON PLEAS,

ON APPEAL

FROM THE DECISIONS OF THE

REVISING BARRISTERS,

FROM MICHAELMAS TERM, 11 VICT., TO MICHAELMAS TERM, 17 VICT.,
BOTH INCLUSIVE.

VOL. II.

These Reports will be continued by Messrs.
D. D. KEANE and J. GRANT, of the Middle
Temple, Barristers-at-Law.

LONDON :
A. and G. A. SPOTTISWOODE,
New-street-Square.

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BY

ALFRED J. P. LUTWYCHE, M.A.

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.



23,

‘Ως δ’ ἔστι μύθων τῶν Λιβυστικῶν λόγος,
πληγέντ’ ἀτράκτω τοξικῷ τὸν αἰετὸν
εἰπεῖν, ἰδόντα μηχανὴν πτερώματος·
τάδ’ οὐχ ὑπ’ ἄλλων, ἀλλὰ τοῖς αὐτῶν πτεροῖς
ἀλισκόμεσθα. *ÆSCHYL. Fragment.*

VOL. II.

LONDON:

W. G. BENNING AND CO., LAW BOOKSELLERS,
43. FLEET STREET.

1854.

J U D G E S
OF
THE COURT OF COMMON PLEAS
DURING THE PERIOD COMPRISED IN THESE REPORTS.

The Right Hon. Sir THOMAS WILDE, Knt., L. C. J.

The Right Hon. Sir JOHN JERVIS, Knt., L. C. J.

The Hon. Sir THOMAS COLTMAN, Knt.

The Hon. Sir WILLIAM HENRY MAULE, Knt.

The Hon. Sir CRESSWELL CRESSWELL, Knt.

The Hon. Sir EDWARD VAUGHAN WILLIAMS, Knt.

The Hon. Sir THOMAS MOON TALFOURD, Knt.

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CASES

ARGUED AND DETERMINED

1847.

IN THE

COURT OF COMMON PLEAS,

UNDER THE STAT. 6 VICT. c. 18.

IN

MICHAELMAS TERM,

IN THE

ELEVENTH YEAR OF THE REIGN OF VICTORIA.

PALMER, Appellant, and ALLEN, Respondent.

November 11.

GRAY applied (this being the first day appointed for hearing appeals), on behalf of the appellants, in this and two other cases of appeal from the decision of the revising barrister for the borough of *Bewdley*, for leave to deliver paper books to the Judges *nunc pro tunc*. He admitted that he was not in a condition to assign any satisfactory reason for the delay which had occurred.

Paper books must be delivered to the Judges four clear days before the first day appointed for hearing appeals, and the Court will not relax this rule, unless a sufficient excuse be given for non-compliance with it.

But where the appellant's attorney, who had entered the appeal, had appointed a London agent from the 2d of November, and till the 10th of November had not fully instructed him in what matters he was to act for him, whereby a mutual misunderstanding took place about the prosecution of the appeal, the Court allowed the paper books to be delivered *nunc pro tunc*.

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WILDE C. J. The 60th section of the stat. 6 *Vict.* c. 18. expressly enacts "that all appeals or matters of appeal from or in respect of any decision of any revising barrister, entertained in manner herein-before mentioned, shall be prosecuted, heard, and determined in and by her Majesty's Court of Common Pleas, at *Westminster*, according to the ordinary rules and practice of that Court with respect to special cases, so far as the same may be applicable and not inconsistent with the provisions of this act, or in such manner and form, and subject to such rules and regulations, as the said Court from time to time, by any rule or order made for regulating the practice and proceedings in such appeals, shall order and direct." The statute refers to the known existing practice of the Court in regard to hearing and determining special cases, and says that the decision of the barrister may be reviewed if the appeal be prosecuted in accordance with the existing rules of practice, or such other rules as the Court may adopt. The Court saw no reason, when first called upon to exercise the jurisdiction conferred by the act, to lay down any other rules of practice than those which were already familiar to the profession in regard to special cases, namely, that the paper books should be delivered four clear days before the day appointed for the argument. We are now asked to depart from that practice, and we are told that no reason can be assigned for the appellants not having followed it. When the practice of the Court is so well known as to be specifically referred to in an act of parliament, we think that this is an application which the Court cannot entertain. Some reason ought to be given for such an application. In

some cases the Court have relaxed the rule (a), and in one instance upon the ground that the party applying was ignorant of the practice. But the statute having been in force for some time, we cannot any longer allow ignorance of the practice to be a sufficient excuse. I think that when a person comes into a Court of justice, he ought to ascertain what the practice of the Court is.

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Application refused.

On a subsequent day (*November 15th*), the appeals, which stood respectively 7th, 8th, and 9th on the list, not having been reached,

Whateley renewed the application, and produced an affidavit, from which it appeared that the attorney in the country who had entered the appeals for the appellants, and who had also an office in town up to the first day of the term, had, from the commencement of the term, made an arrangement with a *London* firm to act as his agents, and until the 10th of *November* had not fully instructed them in what matters they were to act for him. The affidavit stated that the country attorney believed that his agents would attend to the further prosecution of the appeals, while the *London* agents, on the other hand, were under the impression that the country attorney was himself taking the requisite steps for that purpose. The agents tendered the paper books to the judges' clerks on the 11th of *November*, but the clerks declined to receive them without the authority of the Court.

(a) See *Croucher v. Browne*, antè, Vol. I. p. 303. ; *Elliott v. The Overseers of St. Mary within*, Id. p. 508. ; *Busher v. Thompson*, Id. p. 509, note.

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PALMER
v.
ALLEN.

WILDE C. J. When this case was last before us, it was stated that the paper books had not been delivered, and that no reason could be assigned for the omission, which was as much as saying that the appellants thought the rules of the Court were of no consequence, and need not be attended to. Under the circumstances now disclosed, however, we think that a sufficient excuse has been shewn. The substance of the affidavit is that the attorney had recently changed his mode of transacting his business, and that some misunderstanding arose about the prosecution of the appeal. The Court will therefore order the paper books to be received.

Application granted.

November 11.

BURTON, Appellant, and GERY, Respondent.

A county voter whose right to vote depends on the successive occupation of land, conformably to stat. 6 Vict. c. 18, s. 73., must always send in a new claim to vote, which should describe the lands occupied in immediate succession.

A's qualification was described in the third and fourth columns of the old register respectively as "Occupier of land above 50l.," and "Own occupation." Within the qualifying period he changed his occupation for other land in the same parish of sufficient value, but did not send in any new claim. Held, that he did not retain the same qualification as described in the register, although the description there would apply to both occupations, and consequently that his name must be struck out of the list of voters.

AT a Court held for the revision of the list of voters for the parish of *Cold Ashby*, before Sir John Eardley Eardley Wilmot, Bart., the revising barrister for the southern division of the county of *Northampton*, Edmund Singer Burton objected to the name of *David Attfield* being retained on the said list.

The name of *David Attfield* stood thus on the register : —

David Attfield.	Cold Ashby.	Occupier of land above £50.	Own Occupation.
-----------------	-------------	-----------------------------	-----------------

David Attfield had occupied a farm at *Cold Ashby*, which he held of *Mr. Loveday*, of sufficient value to give a vote, for several years up to *Lady-day*, 1847, when he left it. At *Michaelmas*, 1846, he took another farm of *Dr. Walker*, also of sufficient value, in the same parish, which he continued to hold up to *October*, 1847. He had not made any new claim.

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BURTON
v.
GERY.

The question for the consideration of the revising barrister was, whether the qualification already on the register was sufficient to entitle *Attfield* to vote in respect of successive occupation. The barrister was of opinion that *Attfield's* qualification was sufficiently described in the said list, there having been no *hiatus* between the said occupations, and that it was not necessary for him to send in a new claim; and he accordingly retained *Attfield's* name on the list.

Humfrey for the appellant. The question is, whether a county voter who has been on the register for several years in respect of a particular qualification, and who has parted with that qualification and acquired another, to which the same local description applies, is exempted from the obligation to send in a new claim, pursuant to stat. 6 *Vict. c. 18. s. 4.* That section requires that all persons entitled to vote for a county, "who being upon such register shall not retain the same qualification or continue in the same place of abode *as described in such register*, and who are desirous to have their names inserted in the register about to be made," shall give notice to the overseers of their claim to vote. It is true that the description in the list applies to *Walker's* farm as well as to *Loveday's* farm; but the voter's qualification rests on the successive occupation of two different

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 v.
 GERY.

tenements, pursuant to the 79d section of the Registration Act. One occupation only is described in the register; and the Court held, in *Bartlett v. Gibbs (a)*, that the different premises occupied in immediate succession ought to be all set forth in the description of a voter's qualification. That was the case of a borough vote; but the principle of the decision applies with equal force here, because the judgment of the Court proceeded on the ground that the list should afford such information of the nature and situation of the premises occupied as would enable other voters to ascertain by inquiry the sufficiency of the occupation and value. *Attfield* ought to have sent in a new claim, and then his name would have appeared in the list of claimants, and notice of his change of qualification would have been given to all interested in the matter.

Hayes, for the respondent. *Bartlett v. Gibbs (a)* has no application. The appellant in that case had occupied two houses, one in *East Street*, the other in *West Street*, but the two farms occupied by *Attfield* are both included in the description "land" contained in the register. [*Maule J.* The question is, whether he retained the same qualification.] The 4th section says "the same qualification as described in such register," meaning that it shall not be necessary for the party to send in a new claim, if the register already in force correctly describes his new qualification. Why should he be bound to send in a fresh claim, when he can only describe his qualification in the same terms over again? [*Maule J.* If he did not send in a new claim, an objector would not have

(a) *Antè*, Vol. I. p. 73.

the opportunity of ascertaining whether the property occupied was of sufficient value.] The 4th section of the act must be read in connection with the proviso at the end of the 40th clause, which enables the revising barrister to retain the name of the party objected to on the ground of change of abode without a fresh notice of claim. [*Maule J.* The concluding words of the proviso give a death-blow to that part of your argument, for it says, "provided that such person &c. shall prove that he possessed on the last day of *July* the same qualification in respect of which his name has been inserted in such list, and shall also supply his true place of abode, which the said barrister shall insert in such list."] "Such list" means the list to be finally signed by the barrister, which then becomes the register for the ensuing year. [*Maule J.* If a man, after living at *Old Court*, goes to *New Court*, it is clear that he would be obliged to send in a new claim, and *à fortiori* he ought to do so where he leaves one *Old Court* and goes to another *Old Court*, because the description of his qualification is equivocal. *Wilde C. J.* Is not "such register" in the 4th clause the old list of voters? and, if so, is it not clear that "land in my own occupation" is a description of *Loveday's* farm, and not of *Walker's* farm?] It is submitted that the description applies to both.

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GERY.

Humfrey was not called upon to reply.

WILDE C. J. I cannot bring myself to entertain any doubt in this case, either on the strict construction of the statute, or on the reason of its enactments. The act 6 *Vict. c.* 18. s. 4. expressly requires that where a party, who is on the register then in force, shall not

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retain the same qualification — by which I understand not simply the same local description of the qualification, but the same property in respect of which the qualification is given (*a*) — he shall send in a new claim. The section also requires that where a party has changed his abode he shall send in a new claim; and although that enactment is subsequently modified by the 40th section, still it shews that the intention of the legislature was that full information should be given for the purpose of ascertaining the identity and qualification of the party. Now if a person occupies premises of known adequate value, it seems as material that, where the occupation has been changed, notice of the change should be given, as that he should give his original notice of claim. If, after changing his occupation, he continues in the same year's list, every body will suppose that he stands in the same position as he did before. I think that the object which the legislature had in view, namely, that every thing relating to the qualification should be open to investigation, seems to require that when a party claims to be entitled to vote in respect of the successive occupation of premises, he should send in a claim specifying that successive occupation, and not appear on the list in respect of a *continued* occupation. No valid reason whatever has been assigned for a different construction of the act. It is said that in this case the same description of the voter's qualification would appear in two different lists; but I do not see any difficulty in that myself; and, at all events, no resulting inconvenience has been pointed out. I think, therefore, that

(*a*) See *Daniel v. Camplin*, *antè*, Vol. I. p. 264.

the revising barrister's decision was erroneous, and that the party ought to have sent in a new claim, since, within the meaning of the 4th section of the Registration Act, he did not retain the same qualification which was described in the register.

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COLTMAN J. It is clear that *Attfield* was entitled to be registered; but the question is, whether he has taken the proper means to effect that object. It is rather by implication than by the express terms of the act that he appears to have forfeited his right to be registered; because the earlier part of the 4th section only directs the overseers to give notice to persons entitled to vote to send in their claims. It does not go on to say that, unless such claims be sent in, the right to vote shall be forfeited for the ensuing year. But such must have been the intention of the legislature, because the latter portion of the clause directs the parties themselves to send their claims in to the overseers on or before the 20th *July*. *Attfield* appears to me not to have given the notice of claim required by the act; and therefore he was not a person who could be retained in the list by the revising barrister.

MAULE J. It is obvious that the occupation of premises in succession by the tenant in this case does not take him out of the predicament in which he is placed by the 4th section, because he has not retained the same qualification which he had before. Whether the qualification was the same or not would be determined by looking at the land. Two pieces of land, one looking to the east, and the other to the west, would not be the same qualification, however you might describe

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v.
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them. The only ground on which it is attempted to sustain the decision of the revising barrister is the ambiguity of the description. But that, so far from dispensing with the necessity for sending in a new claim, affords an additional reason for making it, because the description is likely to mislead. The spirit of the act would say so, and the letter says the same thing. This man clearly did not retain the same qualification, unless you can say that the qualification consists in a name, and not in the occupation of land. He is therefore, a person who, not having the same qualification, ought to have sent in a fresh claim, and not having done so, his name must be struck out of the list of voters.

WILLIAMS J. It seems to me that the qualification described in the old register ceased on the 25th of *March* last. It was therefore necessary for *Attfield* to resort to his new qualification, which could not be described in the old register, for the plain reason that the new qualification did not exist when that register was made up.

Decision reversed.

Humfrey applied for costs, but the court did not entertain the application.

1847.

SHELDON, Appellant, and FLATCHER, Respondent. *November 11.*

THIS was a consolidated appeal from the decision of *Thomas Clement Sneyd Kynnersley Esquire*, the revising barrister for the borough of *Cheltenham*. At the court of revision *John Fletcher* objected to the name of *Charles Sheldon* being retained in the list of voters for the said borough.

The notice of objection was in the following form :

“ To Mr. *Charles Sheldon*, 1, *Olney Place*.

“ I hereby give you notice that I object to your name being retained on the list of persons entitled to vote in the election of a member for the borough of *Cheltenham*.

(Signed) *John Fletcher*,

Of 5, *Sherborne Street*,

“ On the list of voters for the parish of *Cheltenham*.”

It was contended, on behalf of the person objected to, that the notice of objection was defective, in that it did not shew in what town or parish *Sherborne Street* was situate, there being other parishes within the distance of seven miles containing streets, though it was not shewn that there was any other *Sherborne Street* than that in the parish of *Cheltenham*.

The borough of *Cheltenham* consists of the parish of *Cheltenham* only, and the names of the whole of the voters for the borough are comprehended in one list, viz. those entitled to vote in respect of property situate

information to the party objected to, is a question of fact for the barrister, and the Court will not review his decision upon it.

A notice of objection was in the following form : — “ To Mr. C. S., 1, *Olney Place*. I hereby give you notice, that I object to your name being retained on the list of persons entitled to vote in the election of a member for the borough of *Cheltenham*. (Signed) J. F. of 5, *Sherborne Street*, on the list of voters for the parish of *Cheltenham*.” Held, that “ 5, *Sherborne Street* ” meant “ 5, *Sherborne Street, Cheltenham*,” and was *prima facie* a sufficient description of the objector’s place of abode, within the meaning of stat. 6 Vict. c. 18. s. 17. Whether a notice of objection describes on the face of it an objector’s place of abode, is a question of law. Whether such description gives sufficient

1847. within the parish of *Cheltenham*. The name of *John*
 SHELDON *Flatcher* (the objector) appeared in the said list of
 v. voters, and his place of abode and the local descrip-
 FLATCHER. tion of his qualification were therein described precisely
 in the same words as in the notice of objection, viz.
5, Sherborne Street. It was not suggested that in fact
 there was any other place called *Sherborne Street*
 within the borough of *Cheltenham*, or that it was not
 perfectly well known, or that any practical inconve-
 nience followed from the omission of the name of the
 town or parish.

The revising barrister thought the notice of objection
 sufficient, and the person objected to having failed to
 prove his right to have his name retained in the list
 of voters, his name was expunged therefrom.

Byles Serjt., for the appellant. The notice of objec-
 tion is not a sufficient compliance with the form re-
 quired to be followed by stat. 6 *Vict. s. 17*. The notice
 ought at least to have contained the name of the parish
 in which *Sherborne Street* is situate, as the case finds
 that there is a plurality of parishes and streets within
 the distance of seven miles, which is the limit of resi-
 dence for voters. It is not improbable that there may
 be more than one *Sherborne Street* in a circle of seven
 miles round *Cheltenham*. But, further, it is submitted
 that the name of the town ought to have been added to
 the description of the objector's place of abode. The
 section referred to gives all parties whose names are on
 the list of voters the right to object, and it is not neces-
 sary that they should be resident within the seven miles
 at the time when the notice of objection is served.
 There might be a *Sherborne Street* in *Bristol* or *Liver-*

pool. Woollet v. Davis (a) decides that the notice of objection must speak for itself; and as the description of the place of abode is too general, it is submitted that the decision of the barrister was wrong.

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Keating, for the respondent. *Woollet v. Davis (a)* is not in point. The decision in that case amounts to this, that when the description of the objector's place of abode is insufficient in itself, the description cannot be aided by a reference to the register. The barrister found that the notice there was not good *per se*, but in this case he finds as a fact that the notice of objection was sufficient. [*Maule J.* You do not, then, rely on that part of the case which states that the objector's name appeared in the list of voters &c.?] No. [*Maule J.* The question then is, whether on the face of the notice the description of the place of abode may be such as to justify the revising barrister in holding it to be sufficient.] That question must always depend upon the circumstances of each particular case. There can be no general rule laid down for the sufficiency of a description. "*King Street, London*," would not be enough, though probably "*King Street, Huntingdon*," would. In *Knowles v. Brooking (b)* the Court held that the true place of the objector's abode, as it was at the time of serving the notice, might be inserted in the notice of objection, though it was different from that which appeared against his name upon the list of voters. The ground upon which that decision proceeded was, that the insertion of the true place of abode must afford a better opportunity of inquiry and communication than

(a) *Anté*, Vol. I. p. 607.

(b) *Anté*, Vol. I. p. 461.

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could be given by inserting the old place of abode. It is, then, a question of fact for the decision of the barrister, whether the description in the notice gives sufficient information of the objector's place of abode. [*Maule J.* Suppose the objector to be a person of *European* reputation; would the words "of *Europe*" be a sufficient description of his place of abode? It cannot be a question of fact only, or the barrister, at least, did not think so, because this is a consolidated appeal, which is stated by him to have been decided upon a point of law.] The 101st section directs that no inaccurate description in any notice of any place shall prevent the operation of the act, provided that such place shall be so denominated as to be commonly understood; and that must be a question of fact for the revising barrister. [*Williams J.* That clause applies, not to omissions, but to equivalent expressions, as *St. Kitt's* for *St. Christopher's*. It did not mean to limit the quantity of description.] *Tindal C. J.* in *Gadsby v. Warburton (a)*, expressed his opinion that the omission of the parish in the notice would not hurt, unless some practical inconvenience ensued, which is expressly negatived here.

Byles Serjt., in reply. The Court has already decided, in *Gadsby v. Warburton (b)*, and *Woollett v. Davis (c)*, that the sufficiency of a notice of objection is not a question of fact, but of law. In *Walter v. Haynes (d)*, *Abbott C. J.* seems to have considered that a direction on a letter "*Mr. Haynes, Bristol,*" was too

(a) *Antè*, Vol. I. p. 140.

(c) *Antè*, Vol. I. p. 607.

(b) *Antè*, Vol. I. p. 136.

(d) *Ry. & Moo.* 149.

general to raise the presumption that it reached the particular individual intended; thus treating the question as one of law. [*Maule J.* It appears to me that the Chief Justice considered the matter as a question of fact, namely, whether the letter was delivered or not.] It is impossible to collect from the case the grounds upon which the decision of the revising barrister was based. No one can discover what decision he would have come to if he had only seen the words "of 5, *Sherborne Street*." His mind appears to have been influenced by the absence of any suggestion that there was any other *Sherborne Street* in the borough, or that any practical inconvenience followed from the omission of the name of the town or parish.

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WILDE C. J. This case is attended with some difficulty, in regard to the consequences that may arise from our decision on the particular question which is raised by it. It appears from the 17th section of the Registration Act, that the objector must give a notice to the party objected to, stating the objector's place of abode. Now, does that statement involve a matter of law, or a matter of fact? It appears to me that it may involve both. A place of abode must be some locality distinguished from other places. The description of that locality may be a matter of law, as if a man were to say, "I reside in *King Street*," without telling you in what town of *England King Street* was situated. If the description, therefore, stood simply on that statement, it would be a matter of law whether that was a sufficient description of the place of abode; and if the barrister should hold that the description was sufficient on the face of it, no doubt the Court would review his decision.

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But the finding of the barrister may be on a matter of fact only, and then his decision will be conclusive. In *Woollett v. Davis* (a) the Court held the notice of objection insufficient, although the barrister had decided that it was sufficient. In that case the barrister seems to have thought that the place of abode was defectively stated in the notice itself, but that the notice might be made sufficient by coupling it with the list of voters. The Court decided that the notice must contain a description of the objector's place of abode, and that, in point of law, the description in the notice in question was not sufficient. In *Gadsby v. Warburton* (b), the notice of objection described the objector's residence to be "*Poplar Grove, Didsbury*," *Didsbury* being a vill within that division of the county to which the notice applied. The revising barrister held this to be an insufficient description, considering that the name of the county, or some large town, ought to have been added. The Court treated that as a decision by the barrister that the question before him was, not whether the description of the place of abode in the notice was sufficient for the practical purposes of the act, but whether it could be deemed in point of law a good description of the place of abode, without adding the name of the county or town near which *Didsbury* was situate. The Court were of opinion that such an addition was in point of law unnecessary, and therefore reversed his decision. A notice may, undoubtedly, be given with so much generality as not to point to any locality at all, and such a notice would not be sufficient. In the present case the notice states the place of abode to be "*5, Sher-*

(a) *Anti*, Vol. I. p. 607.

(b) *Anti*, Vol. I. p. 136.

borne Street." Now, where is *Sherborne Street*? How is the party to whom the notice is addressed to read it? The subject of the notice is a vote for the borough of *Cheltenham*, and it is addressed to a voter for that borough. I think, therefore, that *Sherborne Street* must *prima facie* be understood to mean "*Sherborne Street, Cheltenham.*" Reading it so, it appears to me that the decision of the barrister, who finds that the description of the place of abode is sufficient, is conclusive on the matter of fact, and as he was warranted, in point of law, in reading "*Sherborne Street*" as "*Sherborne Street, Cheltenham,*" I am of opinion that his decision upon the whole case ought to be affirmed.

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COLTMAN J. I am rather disposed to think that, if the notice was sufficient to give information to the overseers and the party objected to, it would be enough; but perhaps that may be doubtful, as the notice may require to be considered by other persons. A party must be understood to speak of the borough to which his notice relates. Although it is not necessary that the objector should reside within the borough, still he must be upon the register of voters; and when parties are speaking of *Cheltenham*, the mention of *Sherborne Street* would connect it with the subject of discussion at the time. When, therefore, the objector's place of abode is described in this notice as "*Sherborne Street,*" I think the natural inference would be, that the party was speaking of a street in the borough of *Cheltenham*. The notice must state the objector's true place of abode; and as the barrister has found the notice sufficient, I think it possesses the two requisite qualities of giving information, on the face of it, to the party

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MAULE J. At one time I entertained some doubt whether the revising barrister must not be considered as having formed his opinion of the sufficiency of the notice from an inspection of the list of voters, and the absence of inconvenience to the party objected to. I now, however, think that the barrister must be taken to have formed such an opinion, but that he did not state the grounds of it. Taking the barrister to have decided that the notice describes a place of abode, I think the notice is sufficient. [His Lordship here read the notice.] The borough and parish of *Cheltenham* are mentioned, and *Olney Place* and *Sherborne Street* are also mentioned, which by common intendment would mean that they were in the same town. Taking them away from any context, they would give no information; but looking at the notice as a whole, I think it clear that it describes both *Olney Place* and *Sherborne Street* as being in *Cheltenham*. I do not think that, out of a court of law, any human being would have a doubt about this notice, nor do I think that it ought to be questioned in one. The notice is from a *Cheltenham* man to a *Cheltenham* man on the subject of a vote for *Cheltenham*, and speaks of places in *Cheltenham*. "No. 5, *Sherborne Street*," is in point of law a sufficient statement of the objector's place of abode; and as the barrister has held that it is a sufficient statement of

the place of abode in point of fact, his decision must be affirmed.

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WILLIAMS J. Upon the face of this notice, “ 5, *Sherborne Street* ” must mean “ *Sherborne Street, Cheltenham,* ” which is a good description, in point of law, of the objector’s place of abode. The barrister has decided the question of fact, that it was sufficient to give information to the party objected to, and we ought not to disturb his decision.

Decision affirmed.

TOMS, Appellant, and LUCKETT, Respondent.

November 15.

UPON an appeal from the decision of *Thomas Young M^cChristie*, Esq., the revising barrister for the city of *London*, the following case was stated for the opinion of the Court:—

W. E. Luckett objected to the name of *Moses Toms* being retained on the list of persons entitled to vote in the election of members to serve in parliament for the city of *London*, in respect of the occupation of apartments at No. 21, *Milton Street*, in the parish of *St. Giles without, Cripplegate*.

The facts of the case were these:—*Moses Toms* occupied the first floor, consisting of two rooms in the house, No. 21, *Milton Street*, in which he had resided for the last year and three quarters, at a rent of 5s. 6d. a week. His landlord occupied a shop and parlour on the ground floor in the same house, but did not sleep there, and three other persons occupied other distinct apartments upstairs in the house. There was but one

The appellant occupied, at a rent of 5s. 6d. a week, two rooms in a house, in which the landlord also occupied a shop and parlour. The landlord did not sleep in the house. Each party had a key to the outer door, which had no other fastening than the lock. Held, first, that the appellant occupied a “ building; ” secondly, that he occupied it as tenant, within the meaning of stat. 2 W. 4. c. 45. s. 27.; *Williams J. dubitante* on the first point.

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outer door to the house, by which the landlord, in common with all the inmates, entered and came out. The landlord, *Toms*, and the three other inmates had each respectively a key of the outer door, and they all locked or unlocked that door when and as they pleased. The door was never barred or fastened inside at night; there was neither bolt nor chain to it; it stood open during the day time. The landlord's shop door was inside the passage, which passage *Toms* had to enter and pass along to get to the staircase that led up to his apartments, and which staircase was shut off from the passage by a swing door which had no lock to it. There was a back kitchen at the end of the said passage, in which there was a cistern for water, and from which all parties in the house were supplied with water upon going there for it. The outer door was opened in the morning by the party who had occasion first, and locked at night by whoever had occasion last, either to enter or to leave the house. The question was, whether under the circumstances stated the occupation of *Moses Toms* was such an occupation in law as to entitle him to vote under the Reform Act. On behalf of the appellant it was contended, that as the landlord did not reside in, but merely occupied a part of the house, the appellant having a key as well as the landlord of the outer door, and residing there, the landlord's occupation did not prevent *Toms* from being enfranchised, and that therefore he was entitled to be registered. It was urged on the contrary, that *Toms* had no exclusive control over the outer door, and that he was a mere lodger. The revising barrister held the objection to be valid, and expunged the name of the appellant from the list of voters. If the Court should be of opinion that that decision was erroneous,

the name of the appellant was to be reinserted in the said list.

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Crompton, for the appellant. When a landlord lets off part of his house, and sleeps himself on the premises, he is the *paterfamilias*, and the possession of the house is rightly laid in him. But as the landlord here did not sleep in the house, the two rooms specified in the case were the *domus mansionalis* of *Toms*, and in an indictment for burglary they would be so described. The landlord had no control over the movements of the occupiers, each having a key to a common outer door, and entering and going out when he pleased. It was the same thing as if there had been no outer door, or as if the outer door had always stood open. Having then a distinct set of apartments, and uncontrolled access to them, *Toms* had a sufficient occupation to entitle him to vote; *Wright v. The Town Clerk of Stockport*. (a) [*Wilde C. J.* There the barrister found that each tenant had the exclusive use of his room, and the key to the door thereof; but it does not appear in the present case that the appellant had any other key than that which unlocked the outer door of the house.] It is stated that three other persons occupied other *distinct* apartments. In *Pitts v. Smedley* (b), the claimant was held to be a lodger, and to have only a limited enjoyment of his apartments, because he had not a key of the street door. *Score v. Huggett* (c) is also an authority to shew that the uncontrolled right of ingress and egress is the cardinal point on which the question turns. In that case the landlord did not, as he did here, occupy any

(a) *Antè*, Vol. I. p. 32.

(b) *Antè*, Vol. I. p. 196.

(c) *Antè*, Vol. I. p. 198.

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portion of the house himself; but that makes no difference. It is submitted that even if the owner of a house resided in it, an exclusive occupation of apartments therein, with an uncontrolled right of access to them by day and night, would constitute an occupation as tenant within the stat. 2 W. 4. c. 45. s. 27. *Wansey v. Perkins (Hill's Case)* (a) may appear at first sight to be an authority against this proposition, but the decision of the Court proceeded upon the ground that the floor in respect of which the vote was claimed was not a separate and distinct tenement. In *Kearney's Case* (b) the claimant's vote had been disallowed by the registering officer, on the ground that he had not an exclusive right to the outer door. There the owner of the house did not reside therein, and the street door was locked at night; but the claimant had the key of the street door, and the landlord's brother-in-law had another key for it. It was held by *Crampton J.*, after conferring with all the *Irish* judges, that the claimant ought to be admitted to register his vote; and the reason assigned was, that there was no person who could control or abridge his right of exit or of entrance. This is an authority in point; and the analogy of the cases decided upon indictments for burglary support the same view of the case. In *Lee v. Gansel* (c) Lord *Mansfield* observed, "When a burglary is committed in the apartments of one who lodges in a house, the circumstance of the *owner's living* in it, or his occupying only a shop or cellar, in which he does not sleep, makes a very material difference as to the form of the indictment; for in the latter case the lodger has the *outer* door entirely to himself, and the burglary

(a) *Antè*, Vol. I. p. 252.(b) *Alc. R. C.* 22.(c) *Cowp.* 8.

in such case must be laid in the house of the lodger ; but it is otherwise in the former case, for there it must be laid in the house of the owner." So it is said by *Blackstone* (a) : " If the owner himself *lies* in the house, and hath but one outer door, at which he and his lodgers enter, such lodgers seem only to be inmates, and all their apartments to be parcel of the one dwelling-house of the owner." Accordingly, in *R. v. Rogers* (b), which was a case reserved for the opinion of the judges, it was held that the apartments of lodgers should be considered as their respective dwelling-houses, if the owner of the premises did not sleep under the same roof. The landlord in that case did not sleep on the premises, but he occupied a cellar for the purpose of keeping wood and lumber in it. Again, in *Trapshaw's Case* (c), the judges decided that a house, the whole of which was let out in lodgings, and had one outer door common to all its inmates, was the mansion-house of its several inhabitants. He referred also to *Reg. v. Lady E. Ponsonby* (d), *Peyton's Case* (e), *Fenn v. Grafton* (g), and *Monks v. Dykes*. (h)

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Grove, for the respondent. The Court has more than once intimated its opinion that decisions upon indictments for burglary and settlement cases are no authorities upon the construction of the Reform Act. It has been contended, on the other side, that the landlord must reside in order to deprive a lodger of his right to vote ; but the cases already decided by the

(a) 4 *Comm.* 225.

(c) 1 *Leach*, C. C. 427.

(e) 1 *Leach*, C. C. 324.

(h) 4 *M. & W.* 567.

(b) 1 *Leach*, C. C. 89.

(d) 3 *Q. B. Rep.* 14.

(g) 2 *Bing. N. C.* 617.

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Court have proceeded upon the question of exclusive occupation. In *Rex v. Ditchet*, the rule laid down by *Littledale J. (a)*, is in these words: "It is not necessary, in order to make a man an occupier, that he should actually sleep or take his meals in a house, or that his family should actually dwell in the whole house; but the law considers him, for this purpose, an occupier if he hold the whole, and by himself or his family occupy part." In the present case the landlord occupies a shop and parlour on the ground floor, and must therefore be taken to be, in law, the occupier of the whole house. In *Wright v. The Town Clerk of Stockport (b)*, each tenant had the exclusive use of his room; no such fact is found in the present case. In *Pitts v. Smedley (c)*, the appellant was stated by the barrister to have had an exclusive control over the rooms which he occupied; but as he had no key of the street door, the Court held that he had not an exclusive occupation sufficient to entitle him to vote as a tenant under the 27th section of the Reform Act. On the other hand, in *Score v. Huggett (d)*, the occupation was considered sufficient, as the landlord did not reside in, or occupy, any part of the house, and the claimant had the exclusive occupation of apartments therein, and a key of the outer door. *Wansey v. Perkins (Hill's Case) (e)*, was also decided upon the same principle. The landlord resided in the house; and though it was found by the case that the claimant was in the exclusive occupation of his apartments, and that he had a key to the outer door, the Court were of opinion that he was not entitled to a vote. It is submitted how-

(a) 9 B. & C. 185.

(c) Antè, Vol. I. p. 196.

(e) Antè, Vol. I. p. 252.

(b) Antè, Vol. I. p. 32.

(d) Antè, Vol. I. p. 198.

ever, that residence is not essential to an exclusive occupation by the owner, if he has not formally divested himself of all dominion over the premises. In cases of burglary, it must be shewn that the owner slept in the house, because the essence of the offence is the entry *in the night time*; but it is clear that the Reform Act did not contemplate residence on the premises occupied as a necessary ingredient in the qualification, because the occupier may reside within seven miles of the borough. To entitle an occupier to vote as tenant, he must, to use the language of *Crampton J.* in *Kearney's Case* (a), "shew that he is not dependent upon the good will or leave of another for any circumstance necessary to the full, free, and exclusive enjoyment of his house, or, in other words, he must *command* the entrance to it and the exit from it. To effect this latter object, he must have an exclusive right to, and control over, the outer door of his house; if he has not, his occupation cannot be considered as an exclusive occupation, since it will be in the power of some other person to disturb his possession without being a trespasser." It cannot be said that the occupier *commands* the entrance and exit when the landlord has also a key. [*Wilde C. J.* If the landlord has a right to put another lock on the door, the tenant cannot be said to have a control over it; but if he gives the tenant a key, and cannot change the lock, how can the tenant's possession be disturbed?] In *Wansey v. Perkins* (*Hill's Case*) (b), both the claimant and the landlord had keys; but it was held that the tenant had not an exclusive occupation. If a landlord retains any interest in the premises, and has a power of entry, he does not divest him-

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(a) *Alc. R. C.* 24.

(b) *Antè*, Vol. I. p. 252.

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Crompton, in reply. The appellant occupies at a rent, and therefore he holds his rooms as a tenant, unless he comes within the description of a lodger. To make him a tenant, it is sufficient that he should have the exclusive occupation of his own rooms, and uncontrolled access to the outer door. In *Wright v. The Town Clerk of Stockport* (a), the landlord occupied a portion of the premises, yet the Court held that the tenant had an exclusive occupation. [Coltman J. It only appears that the landlord was *rated* as an occupier and *paid* the rates.] In *Wansey v. Perkins* (*Hill's Case*) (b), the landlord *resided* on the premises.

WILDE C.J. The question which is referred to the Court in this case is very limited; for, after stating various facts as to the interests of the tenants and the mode of enjoying the premises, the barrister proceeds to say that it was contended on the behalf of the appellant, that as the landlord did not reside in, but merely occupied a part of the house, and as the appellant resided on the premises, and had a key of the outer door as well as the landlord, the occupation by the landlord did not prevent the appellant from having a right to vote. It was urged, on the contrary, that the appellant had no exclusive control over the outer door, and that he was a mere lodger; and this objection the revising barrister held to be valid, and thereupon expunged the appellant's name from the list of voters, which is to be

(a) *Antè*, Vol. I. p. 32.

(b) *Antè*, Vol. I. p. 252.

restored to the list if the Court should think the barrister's decision erroneous. Now, I am of opinion that the objection taken to the right to vote was not well founded, and that the absence of an exclusive control over the outer door is not enough to deprive a party of the right to vote. From the manner in which the case is drawn up, it seems to me that it was the intention of the revising barrister to refer to us the question, whether the absence of such control made the appellant, not a tenant, but a mere lodger. The 27th section of the Reform Act enacts that a party who "shall occupy, as owner or tenant, any house, warehouse, counting-house, shop, or other building," of the clear yearly value of not less than 10*l.*, shall, if duly registered, be entitled to vote. Now, what was intended to be comprised in these words, "house, warehouse, counting-house, shop, or other building?" We know perfectly well that what is meant by a "counting-house," as contra-distinguished from a house, is an apartment in a house used for particular purposes; and so is a "warehouse" and "a shop;" they all seem to me to import parts of a house used for particular purposes. But then the act goes on to say "or other building." It appears to me that these words were meant to include occupations like that of a warehouse, counting-house, or shop; so that if there be a distinct portion of a house occupied separately from the rest of the house, that would be sufficient to give the occupier a right to vote. The words seem to have been added for the purpose of preventing nice and subtle distinctions. In the present case the appellant is stated to occupy certain apartments in a house, and I cannot but think that these apartments ought to be considered an "other building,"

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just as much as a shop or warehouse is a building. It appears to me, therefore, that he occupies premises which, if he occupies them in a certain character, would entitle him to vote. Not being the owner, he must occupy them in the character of tenant; and the word "tenant" must be construed, as the Legislature seems to have used it, in its popular sense. He must occupy under a demise which gives him the exclusive right to the possession of the premises occupied. The case states that the appellant occupied two rooms at a rent of 5s. 6d. a-week. I can only understand "rent" as importing a demise; and if he occupies under a demise I should have inferred an exclusive right of possession, even if the case had not stated it. Looking, however, at the whole of the case, I think it perfectly clear that the party was understood to have had the exclusive possession of his apartments. Then what is there to cut down his character and interest as tenant, so as to exclude him from coming within the benefit of this act of parliament? The character of the occupation, and the nature and extent of the party's interest, must be inferred from all the circumstances of the particular case. A person may occupy certain apartments in a house, but another party may have such superior mastership and dominion over it as to prevent him occupying them in the character of tenant. The Court has been called on in particular instances to say whether an occupier has had such an occupation. Where the landlord resided on the premises, and kept a key of the outer door, the Court has inferred that the landlord retained that mastership and dominion, even though the tenant had also a key. But in this case the landlord did not reside on the premises, but merely occupied two

apartments in the house. Now, where a landlord resides on the premises, by which I understand his living on the premises, he is there at all times, both by day and night, and can give an inmate permission to enter or go out ; but when he does not reside on the premises, he cannot always exercise that authority over the entry and departure of the inmates with which his dominion over the outer door clothes him when he resides in the house. It cannot be contended that the tenant is to have an absolute right to enter at some times, but not at others. Whatever, therefore, may be the just inference as to the extent of the tenant's interest when the landlord resides on the premises, the same inference would not be warranted by the fact of the landlord simply having a key of the outer door, and occupying apartments in the house. It seems to me, therefore, that the apartments occupied by the appellant may well be considered a " building " within the meaning of this act of parliament, and that he occupied them as tenant, which is all that the act requires. The objection that he should have had an *exclusive* control over the outer door seems to me to have no force. The fact that he had not such an exclusive control may be a circumstance which tends to shew that he is not a tenant ; but if the tenancy be established by other evidence, I do not see of what value that isolated fact is. Suppose the case of premises being occupied in separate floors, and the landlord residing at a distance ; could it be said that none of the occupiers had a right to vote, because none of them had the *exclusive* possession of a key of the street door ? It appears to me, from the shape in which the question is raised, that the appellant is found to be qualified to vote in all other respects, but that he

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has not an exclusive control over the outer door, which, under the circumstances, is of no consequence. I am of opinion, therefore, that the appeal must be allowed, and the name of the appellant be restored to the list of voters.

COLTMAN J. I think that the revising barrister was wrong. There is no distinct statement as to the interest which the party had in these rooms; but as the case nowhere points to any other person as having a right to enter them, but simply finds that the appellant was a lodger because he had not the exclusive use of the outer door, I think the stipulation between him and the landlord must be understood to be that he should have the use of the rooms, and nobody else. Now, if a party has the exclusive use of a particular set of rooms, on payment of rent, that *prima facie* imports a tenancy. In the case of *Wansey v. Perkins (Hill's Case)* (a) the Court thought that the residence of the landlord with his family on the premises rebutted such an inference. In this case, however, it appears to me there is nothing to shew that the party ought not to be considered a tenant. With regard to the question whether the words "other building" would include the premises occupied by the appellant, I think that the rooms in question would be an "other building" of a similar description with those enumerated in the section. These words do not imply that the building should be separate, because a warehouse, a counting-house, and a shop, need not be separate and distinct, but may form a portion of a larger building, namely, a house.

(a) *Ante*, Vol. I. p. 252.

MAULE J. I also think that the appellant was right in this case. The point intended to be raised seems to turn not so much on the nature of the thing occupied, as on the nature, amount, and quality of the occupation. There is nothing in the case which seems to shew that any doubt was entertained whether the occupation of the first floor of a house can confer a vote, and indeed this point is so very well settled, that I do not think it could have been intended to be raised. The question raised was, whether there was an occupation as tenant within the meaning of the 27th section of the Reform Act, or an occupation as a lodger. I think the spirit of the cases on the subject is this—that where the owner of a house is the person who lives in and occupies the whole of it, and takes in some other person to live with him in the house, although that person may occupy a room therein which nobody else occupies, and although he may have ingress and egress to and from that room whenever he pleases, yet if the owner of the house retains his general character as master of the house which he did before, then that the person so occupying is a lodger, and not a tenant within the Reform Act. I do not think that it matters whether he has or has not a key of the outer door to let himself in and out when he pleases. He has only a right of way, and that does not affect his right to the occupation of his apartments. The question of whether the party is a lodger or tenant, I think, depends on the circumstance of there being a person living in the house in the quality and capacity of master of the house, and having some degree of control over that part of the house which the party occupies. Where that is the case, the party is not a tenant within the act, but a mere lodger,

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to whom the statute does not give the elective franchise. The circumstance, however, of the landlord being master of the house, does not necessarily follow from his being landlord. If he does not reside in the house by himself or his family, he has no right of control over any other part of the house than that which he occupies; though he may stipulate for that right. But when a landlord lives in the house and retains the character of the master, then he may make a person occupying a part of the house a lodger merely, and not a tenant; when he lives out of the house, no one can properly consider him as master of the house for that purpose. In the present case the owner merely occupies a shop and parlour, and does not reside on the premises. The appellant, who occupies at a rent, is his tenant, and, having constant access to his apartments without asking leave of any body, is entitled to vote as such.

WILLIAMS J. I concur in opinion with the rest of the Court, though I confess my mind is not quite free from the doubt which has occurred to me whether the appellant's rooms come within the meaning of the words "other building" in the 27th section of the Reform Act. I have always considered the meaning of the statute to be that a claimant, in order to make out his right to vote under it, must be in a condition to maintain trespass in respect of some such tenement as is mentioned in the statute. Notwithstanding, therefore, the authority of *Wright v. The Town Clerk of Stockport* (a), I have felt doubts whether the appellant can

(a) *Ante*, Vol. I. p. 32.

be said to have occupied a "building." My doubts, however, are not strong enough to induce me to differ in opinion from my learned Brothers.

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Decision reversed.

DOWNING, Appellant, and LUCKETT, Respondent. November 15.

THIS was an appeal from a decision of the same revising barrister as in the preceding case.

At the revision the respondent objected to the name of *Henry Browne Downing* being retained in the list of persons in the parish of *Allhallows Staining*, entitled to vote for the city of *London*, in respect of the occupation of a counting-house at No. 11, *Mark Lane*, in the said parish.

The facts stated by the revising barrister were as follows: — *Henry Browne Downing* occupies a counting-house at No. 11, *Mark Lane*, aforesaid, and he has done so for three years at a rent of 20*l.* a year. Six other parties besides his landlord respectively occupy counting-houses in the same house, namely, No. 11, *Mark Lane*. There is but one outer entrance into the house. At the outer entrance there is a small swing iron gate, which is kept sometimes open and sometimes shut during the day time, but it is never locked. There is also a large wooden gate, and likewise a door at the outer entrance, both of which are kept open during the day time, but they are shut and locked inside every night by *A. W. Enever*, one of the landlord's clerks, who resides in the upper part of the house with his family, and who keeps

The appellant occupied, at a rent of 20*l.* a year, a counting-house in a house in which the landlord and six other persons occupied counting-houses. There were a wooden gate and a door at the outer entrance, which were open all day, but which were shut and locked at night by the landlord's clerk, who resided on the premises to protect them, and who alone had keys of the gate and door. It was the clerk's duty to open the gate and door to any of the occupiers, when required to do so. *Held*, that the appellant had a sufficient occupation as tenant, within the 27th section of the Reform Act.

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the keys. *Enever* also unlocks and opens the outer door and the large gate every morning. The landlord requires him to reside there for the protection of the premises and the accommodation of those who occupy the counting-houses at No. 11 aforesaid, and, if he were to leave, the landlord must have another person to reside there in his place. Neither the large gate nor the outer door has a key-hole outside, therefore they can only be locked and unlocked inside. *Enever* pays no rent in money for his apartments, but considers that he pays it in services. After entering at the outer entrance, which is common to the landlord and to all his tenants, proceeding along a short passage, ascending some steps, and turning a short way to the right, the party objected to passes the door of the landlord's counting-house, and then through folding doors into a passage which leads to the door of his own counting-house. There is a water-closet near the landlord's counting-house door common to all the inmates; and the party objected to, if he desires to use it, must return to it through the folding doors. He pays *Enever* a small yearly sum in consideration of his servant's sweeping the passage between his own and the landlord's counting-house. He has no key of the outer gate or door; and if he wishes to gain admittance after the large gate and door at the outer entrance are shut at night, or before they are opened in the morning, he can only do so by ringing a bell, and getting it answered by *Enever*, the landlord's clerk. The party objected to read a letter addressed to himself by the said *Enever*, and afterwards put it into the hands of the revising barrister.

The following is a copy thereof: —

"11, *Mark Lane*, October 15, 1847.

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"Dear Sir, — In reply to your question, whether the outside gates are locked at night or not by myself or servant, I beg to state they are; but of course you or your servants would be admitted at any hour of the night, you having a right.

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"I am, &c.,

(Signed) "A. W. Enever.

"To *H. B. Downing*, Esq."

It was contended, on behalf of the objector, that, there being but one outer entrance into No. 11, the landlord using that entrance and occupying a counting-house there, the landlord's servant keeping the keys of the outer entrance, and the appellant having no key thereof, nor independent power of access, the appellant was not entitled, under the 2 *W. 4. c. 45. s. 27.*, to be registered as a voter for the said city in respect of his said occupation. On the contrary, it was urged, on behalf of the appellant, that the Reform Act did not contemplate that, under the circumstances stated, the party objected to should not be enfranchised, and that he was entitled to vote. The revising barrister held the objection to be valid, and expunged the name of the party objected to from the list of voters. If the Court should be of opinion that that decision was erroneous, the name of the appellant was to be reinserted in the said list.

The case was argued, immediately after the argument in *Toms v. Lockett*, by *Crompton* for the appellant, and *Grove* for the respondent. No additional authorities were cited.

WILDE C. J. We are all agreed that this case is without difficulty. It is perfectly clear that the landlord

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could have retained nothing of his interest save as landlord, with regard to the counting-house in question. This, then, is a "counting-house," falling within the express terms of the act; and the question is whether, when the landlord employs a servant to live on the premises, for the protection of the premises, and the accommodation of those who occupy the different counting-houses, he establishes by this appointment any relation that limits the interests of the tenants who hold under his demise. It appears to me that this case is just like that of chambers in the *Albany*, or of shops in the *Burlington Arcade*, where there is an outer gate which is shut at night, and a porter attends for the protection of the premises, but not to qualify the interests granted to the tenants. The servant is employed by the landlord for a purpose wholly alien and distinct from that of asserting a mastership and dominion over the premises. It seems, therefore, quite clear in this case, that the party occupied the counting-house as tenant.

COLTMAN J. I cannot consider *Enever* as having any right to limit the appellant's means of access to his counting-house, and that is the only ground upon which it could be contended that he had not an exclusive occupation of it.

MAULE J. This is a case of a counting-house held by the appellant at a rent of 20*l.* a year; and I agree that there is a total absence of circumstances showing that it was not occupied by him as tenant. There is nothing to restrain, and every thing to forward such an occupation. There is no keyhole outside the gate, in order to exclude burglars; but *Enever*, living on the

premises, is ready to admit the occupiers of the counting-houses whenever they think proper. It appears, therefore, to me that the claimant has as exclusive a control over his counting-house as it is possible for a man to have.

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WILLIAMS J. concurred.

Decision reversed.

BIRCH, Appellant, and EDWARDS, Respondent.

November 15.

AT a Court held before *Thomas Clement Sneyd Kynnersley*, Esq., the revising barrister for the county of *Monmouth*, for the revision of the list of voters for the parish of *Trevethin* in the said county, *James Birch* objected to the name of *Francis Brittain*, of *Garndiffaith*, being retained on the list of voters for the said parish.

A notice of objection to a voter sent by post, pursuant to stat. 6 *Vict.* c. 18. s. 100., should have an address on the outside as well as in the inside.

To prove a service of notice of objection on the said *Francis Brittain*, an alleged duplicate notice bearing the post mark "*Pontypool, Aug. 24, 1847,*" was produced; but on inspection it appeared that though posted in due time, and correctly drawn according to the form No. 5, Schedule A. 6 *Vict.* c. 18., it was not "duly directed" to the said *Francis Brittain*, unless, as was contended, the words on the face and at the top of the notice, "*To Mr. Francis Brittain, Garndiffaith,*" could be considered a direction. It was proved that on the back of the notice which was delivered to and retained by the postmaster at *Pontypool*, to be forwarded by post to the said *Francis Brittain*, the words, "*To Mr. Francis Brittain, Garndiffaith,*" were written so as to

A notice sent by post had on its back the address of the party objected to; but the paper produced as a duplicate to prove the service only contained his direction on the face of it.

Held, that the paper produced was not a duplicate notice, and, consequently, that the service was not proved.

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form, when the paper was folded into the shape of a letter, an external direction to him.

Under these circumstances it was contended, on the part of the said *Francis Brittain*, that the service of notice of objection upon him was not duly proved, inasmuch as the two papers were not duplicates; and the barrister being of that opinion, retained his name upon the list of voters: but in order to give the objector an opportunity of availing himself of his notice of objection in case the Court of Common Pleas should be of a contrary opinion, the said *Francis Brittain* was called, and failed to establish his qualification.

If the Court should think the service of notice of objection duly proved, notwithstanding the absence of external direction on the alleged duplicate thereof, the register was to be altered by expunging the name of the said *Francis Brittain* from the list; otherwise the register was to remain unaltered.

Forty-nine other cases were consolidated with the above.

Keating, for the appellant. The stat. 6 Vict. c. 18. s. 100. only requires that the notice of objection to the voters shall be "duly directed," and there is nothing in the act which shews that it is essential for the address of the voter to be repeated on the external part of the duplicate. It must be addressed to him, but it does not matter in what part of the duplicate the address appears. The notice might be written on a card, which could not be folded; and all that is necessary is that it should be so addressed as to enable the postmaster to forward it by post to the party for whom it is intended. Even in the present case, the notice might have been so folded

as to shew the address on the outside. The two papers need only be duplicates in essential particulars.

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Byles Serjt., for the respondent. The alleged duplicate was not a duplicate within the meaning of the statute. The 100th section, besides requiring that the notice shall be "duly directed," speaks of an "address," which imports a direction on the back, in the ordinary way in which letters are directed when sent by the post. The section provides that "the postmaster shall compare the said notice and the duplicate, and, on being satisfied that they are alike in their *address* and in their *contents*, shall forward one of them to its address by the post &c.;" clearly shewing that by "address" and "contents" it meant two different things. The language adopted by the Court in *Cuming v. Toms* (a) shews that the so-called duplicate was not one. *Tindal* C. J. says (b) that the section treats the documents "as if each of them were originals," and leaves it "perfectly open to the postmaster to determine *which one* he shall send by the post." *Maule* J. says (c), "I apprehend that a 'duplicate' means a document which is the same as another in all essential particulars. It has the same operation as the writing of which it is the duplicate." *Cresswell* J. also says (d), "It must have been meant that the writing produced [before the barrister] should be identical with that which was sent by post." It is impossible to say that the two documents were identical.

Keating, in reply. At all events there is sufficient proof of the service, by posting the letter, which, irre-

(a) *Ante*, Vol. I. p. 200.

(c) P. 206.

(b) P. 205.

(d) P. 207.

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primâ facie evidence of the service of the notice.

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[*Maule J.* The Reform Act required the service to be personal, or to be effected by leaving the notice at the party's place of abode; the Registration Act permits another mode of service, namely, transmission by post; and the 100th section prescribes the conditions under which such a service shall be considered sufficient. Now "address" clearly means an address written on the outside for the information of the postmaster. The paper retained by him for transmission through the post must be in such a state that he can forward it to its address without writing any thing upon it himself.] There is nothing in the act which requires that the notice should be in the form of a letter.

WILDE C. J. It appears to me that it might lead to very inconvenient consequences if the Court were to hold that the paper produced before the barrister was a duplicate of that which was transmitted by post. The production of the stamped paper before the barrister is to shew what was produced at the post-office, and one of the most important points to be ascertained is, the direction which was given to the postmaster with regard to the transmission of the notice. Now, here a paper is given in evidence which was never intended or calculated for that object. It contains, on the face of it, matter written for a different purpose, namely, to inform the party objected to of the objection to his right to vote. The paper given to the postmaster, on the other hand, has a writing on the back, to inform the postmaster whither he is to send it. In no fair sense of the word, therefore, can the paper produced before

the barrister be considered a duplicate of the other. When I find that the legislature not only uses the word "duplicate," but says that the two papers shall agree in their "address" and "contents," I cannot think that because one paper may be folded in a particular manner, so as to make the name of the party objected to appear on the outside, there has been a sufficient compliance with the provisions of the act. It appears to me that it would lead to very considerable confusion if so plain and simple a direction should be neglected, as that the two papers given to the postmaster should exactly correspond with each other.

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COLTMAN J. I think that when the statute required a direction to the notice, which was to be transmitted through the post, it meant a direction on the outside. The paper produced before the barrister had no external direction, and there was, therefore, a variance between the two documents, which cannot be considered immaterial. Then, if there be a material variance between two papers, there is no duplicate.

MAULE J. I also think that there has not been a sufficient compliance with the provisions of the statute. The address is given for the use of the post-office, and should be written on the outside; and when the documents are delivered to the postmaster, the most essential part of them, as far as he is concerned, is that which shews what he is desired by the party delivering the papers to do. He is desired to leave one of them at the address on the outside of the paper. Now the document produced before the barrister had no address on the outside of the paper, though it had a direction

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inside; and there was, therefore, an entire omission of evidence to shew what it was that the party sending the notice directed the post-office to do. I think, therefore, that the barrister was right in deciding that there was not sufficient proof of the service of the notice of objection.

WILLIAMS J. I also am of opinion that these documents were not duplicates within the meaning of the statute. A direction is required by the form of the notice of objection in the schedule, however it may be served; but if it be served through the agency of the post, it must have a cumulative direction, an address on the outside as well as in the inside.

Decision affirmed, with costs.

November 18.

PALMER, Appellant, and ALLEN, Respondent.

The decision of the barrister, in a consolidated appeal, was given on *Saturday*, the 30th *October*, and the appellant's solicitor was engaged in revising the lists with him till three in the

WHEN this case, which was a consolidated appeal, was called on in the order in which it stood in the list, *Byles* Serjt., who had been instructed for the respondent, suggested, as *amicus curiæ*, that the appellant

afternoon. Immediately afterwards, he sent his clerk in quest of the appellant, with a notice of intention to prosecute, in order to procure his signature thereto; but the clerk was unable to meet with the appellant till the morning of *Tuesday*, 2d *November*, when the signature was obtained, and the respondent served with the notice. *Held*, that the appellant came within the proviso of the 64th section of the Registration Act; not having had reasonable time to give ten clear days' notice of intention to prosecute.

When the respondent appears, he can only be heard on the matter of the appeal.

could not be heard, as the respondent had not received ten days' notice of the appellant's intention to prosecute the appeal, pursuant to the 64th section of stat. 6 *Vict.* c. 18.

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Whateley (with him *Gray*) objected that counsel retained for the respondent had no right to act in the capacity of an *amicus curiæ*, and called upon *Byles* to declare whether he appeared for the respondent or not, referring to the observations of *Tindal* C. J. in *Rawlins v. The Overseers of West Derby*. (a)

Byles having declined to appear for the respondent at this stage of the proceedings,

Whateley produced an affidavit in excuse of the omission to serve the proper notice. The affidavit stated that the decision of the revising barrister on the claim of one of the parties to the consolidated appeal was given on *Saturday* the 30th of *October*, and that the solicitor who attended at the Registration Court for the appellant, was afterwards engaged with the revising barrister up till three o'clock in the afternoon of that day in going through the separate lists of voters, and seeing that various alterations had been made in them in accordance with such decision. Upon leaving the Court the solicitor sent his clerk, with a notice of intention to prosecute, in quest of the appellant, for the purpose of procuring his signature thereto, and after several unsuccessful endeavours on the part of the clerk to meet with the appellant, his signature was obtained

(a) *Ant.*, Vol. I. p. 374.

1847. at seven o'clock in the morning of *Tuesday* the 2nd of
PALMER *November*, and the notice was served on the respondent
V. *Whateley* submitted that under these
ALLEN. circumstances a literal compliance with the law requiring that ten clear days' notice should be given was impossible.

WILDE C. J. Looking at the nature of the business which remained to be done after the barrister had given his decision, and considering that the Court sat late in the afternoon, I think it is not reasonable to expect that the notice would be given during the few remaining hours of the same day. The appellant, therefore, has brought himself within the proviso of the 64th section of the Registration Act, since it appears to us that there was not "reasonable time to give or send such notice." The question now, therefore, is, whether we shall postpone the hearing of the appeal. If the respondent should appear, we shall be ready to hear him; but if not, we shall determine the case in his absence.

Byles applied, on the part of the respondent, for leave to be heard on the question of notice.

WILDE C. J. We can only hear you on the matter of the appeal.

WILLIAMS J. You have appeared, and therefore it is not necessary to prove the notice.

Byles then asked for an adjournment of the hearing, as the appeal involved the construction of some

ancient charters, and he had not been able to prepare himself.

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The Court allowed the hearing to be postponed. (a)

(a) The appeal was subsequently argued, but no judgment has yet (August 1848) been pronounced.

PRIOR, Appellant, and WARING, Respondent.

November 18.

THIS appeal from the decision of *John Greenwood Esq.*, the revising barrister for the borough of *Lyme Regis*, was consolidated with the appeals of *James Templer*, *Henry Augustus Templer*, and *John Charles Templer*.

The case stated that the names of the appellants (who were duly objected to by the respondent) appeared upon the list of voters for the parish of *Lyme*, in the borough of *Lyme*, in the following form:—

Prior, John Venn	-	-	Silver St., Lyme,	House and land	Springfield House.
Templer, James	-	-	Silver St., Lyme,	Do.	Do.
Templer, Henry Augustus	-	-	Do.	Do.	Do.
Templer, John Charles	-	-	Do.	Do.	Do.

The Court has no jurisdiction to hear a consolidated appeal, under the stat. 6 Vict. c. 18. s. 44, when the decision on one of the cases included in it will not govern the rest; nor can the appeal be remitted to the revising barrister, under the 65th section of the act, but must be struck out of the list.

The appellants were duly rated for the property described, and the rates were duly paid by them; and the property is of sufficient value to entitle them all to be retained on the list of voters as joint occupiers, if the qualification is complete in other respects.

Mr. George O'Kelly Templer, a solicitor at *Lyme*, purchased for Mr. Attwood, in 1845, the property in question (*Springfield House*) from Mr. Tarrt for the

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residue of a term of twenty-one years, of which seven were unexpired. Mr. *Tartr* gave up possession to Mr. *O'Kelly Templer* for Mr. *Attwood* on the 25th of *July*, 1845, the agreement for purchase having been made about three weeks before. Mr. *Prior* is the brother-in-law of Mr. *O'Kelly Templer*, and is a barrister practising in *Lincoln's Inn*, and has a residence with his wife and family at *Greenwich*, and has had so for some years. Mr. *John Templer* is a brother of Mr. *O'Kelly Templer*, and is a special pleader practising in the *Temple*, and has a residence with his wife and family at *Greenwich*, and has had so for some years. Mr. *James Templer* is the father of Mr. *O'Kelly Templer*, and is a solicitor residing at *Bridport*, within seven miles of the boundary of the borough of *Lyme*. Mr. *Henry Augustus Templer* is another brother of Mr. *O'Kelly Templer*, and is a solicitor at *Bridport*, and resides with his wife there, and his house also is within seven miles of the boundary of the borough of *Lyme*. Mr. *O'Kelly Templer*, at the latter end of *July*, 1845, treated with Mr. *James Templer* and Mr. *Henry Augustus Templer* for their taking *Spring field* with Mr. *Prior* and Mr. *John Templer* upon the terms hereinafter stated; and Mr. *Templer* (the father) wrote, in the last week of *July*, 1845, to propose to Mr. *Prior* and Mr. *John Templer* that they (the four appellants) should take the house furnished, as yearly tenants, rent free, on the terms of paying the rates and taxes, the tenancy to commence from the 30th of *July*, 1845. An agreement, already prepared, was signed by Mr. *Attwood*, and all the four appellants, on or before the 31st day of *July*, 1845, by which Mr. *Attwood* agreed to let, and the four appellants agreed to take, *Spring field House*, with

the coach-house, garden, &c., together with the furniture and fixtures &c. as tenants from year to year, from the 29th of *July*, 1845, in consideration of the four appellants agreeing to pay all rates and taxes, and to keep the internal part of the house in its then state of repair. In anticipation of the agreement being completed, Mr. *O'Kelly Templer* engaged a woman to take care of the house on behalf of the appellants; and she has lived there as their servant ever since. Upon the 30th of *July*, 1845, Mr. *Henry Templer* went to the house, and told the housekeeper that he came to take possession; and he took the key. Upon the 31st of *July*, 1845, Mr. *Templer* (the father) came to the house and slept there on that night, and six times in the summer of 1846, and four nights in 1847. Mr. *Prior* came down to *Springfield House* with his wife and family in *September* and *October*, 1845, and stayed there a fortnight. He has not been there since until the 9th of *September*, 1847, when he came to *Lyme* with his wife and children and three servants, and remained for a month. Mr. *John Templer* accompanied his father, Mr. *James Templer*, to *Lyme*, during the time of the revision of the list of voters in *October*, 1845 (Mr. *James Templer* being professionally engaged in court attending to the revision), and remained a week at the house. In *August*, 1846, he came to the house with his wife, two children, and one servant, and accompanied by his wife's father and three of his servants. He remained for eleven weeks. In *October*, 1847, Mr. *John Templer* with his wife and family came to the house (while Mr. *Prior* and his family were living in it as above mentioned), and remained there from *Thursday* to the following *Sunday* as the guests of Mr. *Prior*, as far as his table was con-

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cerned. Mr. and Mrs. *Henry Templer* slept three nights or four at the house between the 31st of *July*, 1845, and the 31st of *July*, 1846, one night in *August*, 1847, and again when he came to attend the Court in *October*, 1847, to support his qualification. Whilst Mr. *Prior* and Mr. *John Templer* have respectively been at *Springfield*, they have left their houses at *Greenwich* in the care of sometimes one, and sometimes two servants, on board wages. Several friends and relations of the Messrs. *Templer*, with their assent, have slept for a few days at a time, on one occasion for two weeks, at *Springfield* during *that (a)* year, and others have slept there, with the assent of the Messrs. *Templer* also, for single nights, when they have come from the neighbourhood to balls at *Lyme*. The furniture in the house belongs to Mr. *Attwood*. The value of the furnished house and premises is 150*l.* a year. The value of the house unfurnished is about 80*l.* a year. Mr. *Attwood* pays a rent of 65*l.* a year for the remainder of the term, on a repairing lease. The housekeeper has since the date of the agreement been paid by the appellants, and has acted entirely under their orders. So has a gardener, who has been occasionally employed for the appellants. The produce of the garden (except what has been consumed by the appellants and their families and friends in the above visits) has been consumed (with their assent) by the housekeeper and her husband; and the produce of the grass-field sold by Mr. *O'Kelly Templer* on behalf of the appellants, and carried by him to their account, to the amount of 2*l.* a year. The rates and taxes, amounting to 18*l.* per annum (of which

(a) *Sic*, in copy of case.

6*l.* 15*s.* is the amount of the poor-rate), have been paid by Mr. *O'Kelly Templer*, and repaid him by the appellants.

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The revising barrister found that the exclusive object of the landlord was to enable the appellant to acquire the right of voting for the borough of *Lyme*; that the substantial object of the appellants was to acquire the right of voting; and although they then and continually contemplated an occasional visit to *Lyme* with their families as a consequence of the agreement, that that object formed an inconsiderable part of their real motives for entering into the agreement; but that the agreement was executed by them, with the *bonâ fide* intention of complying literally with its terms, that is to say, of paying the rates and taxes, and of paying for repairs, and of acquiring the rights of tenants from year to year according to the agreement: and upon the above facts the barrister found and decided,

That Mr. *Prior* and Mr. *John Templer* did not actually or constructively reside within the borough of *Lyme*, or within seven statute miles thereof, or of any part thereof, for six calendar months next previous to the last day of *July*, 1847, within the meaning of stat. 2 *W. 4. c. 45.* and stat. 6 *Vict. c. 18.* He found also that the house was not reasonably adapted to be contemporaneously inhabited by the appellants and their families, and thereupon found and decided that while Mr. *Prior* and his family were inhabiting the house, it was neither actually nor constructively occupied by the other appellants within the meaning of stat. 2 *W. 4. c. 45.*, nor constituted their residence; and that while Mr. *John Templer* and his family were inhabiting the house, it was neither

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actually nor constructively occupied by the other appellants, nor constituted their residence.

If the Court should be of opinion that the occupation and residence of each or any of the appellants was sufficient, the names of all, or such as the Court shall think fit, are to be retained on the register; otherwise to be expunged.

Byles Serjt. for the appellant. There are three questions in this case for the consideration of the Court. First, are the motives of a lessor in granting, or of a lessee in accepting a lease, material to the validity of the qualification? Secondly, is the occupation of the appellants sufficient? And, lastly, is there a sufficient residence? [*Maule* J. This is a consolidated appeal, and yet the facts in each of the four cases are different; that is very inconvenient.] The facts are very nearly the same in each case, and they depend on the same points of law. [*Maule* J. The proximity of the facts increases the difficulty; if they were quite distinct we should be better able to deal with them. The 44th section of the Registration Act allows an appeal to be consolidated when the validity of any number of claims or objections depends upon the same points of law, and when consequently one decision would bind all. That is not the case here; there may be bad claims consolidated with good. *Wilde* C. J. These are not consolidated, but different appeals. The revising barrister says that "the names of *all, or of such as the Court shall think fit*, shall be retained on the register." The only question is, whether the Court has jurisdiction to hear what is improperly called a consolidated appeal.] The Court has power, under the 65th section of the act, to

remit the case to the revising barrister, if they think that the statement of the matter of the appeal is not sufficient to enable them to give judgment in law. [*Wilde C. J.* The facts are fully enough stated, but the barrister asks the Court to say whether any one of these four gentlemen are entitled to vote.] If the Court will not remit the case, then at all events *Mr. Prior* is an appellant properly before the Court, and he is entitled to be heard.

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Kinglake Serjt. for the respondent. The parties in this case were made parties to a consolidated, not to a single, appeal. The respondent might have declined to contest the matter if only a single vote had been claimed in respect of the house in question. [*Maule J.* If the revising barrister had decided on each case separately, perhaps he might not have had sufficient doubt on any one of them to induce him to allow an appeal.]

WILDE C. J. I think that the Court has no jurisdiction to hear the appeal in the form in which it is presented to us. Neither do I think that we can remit the case to be more fully stated, because a fuller statement of facts would not remedy the defect which exists in the framework of the appeal.

COLTMAN J. It may appear rather hard on the parties that they should be turned round on a point of this kind, but still I think it very material that the directions contained in the statute should be observed.

MAULE J. I think we have no jurisdiction to hear this appeal, as the revising barrister has done what he

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was not empowered by the act of parliament to do. He was probably induced to consolidate these appeals, because there were four parties before him claiming in respect of one house, and he was desirous of saving them the expense which would be incurred by the prosecution of separate appeals. In dismissing the case, I may observe that if the appeal could have been heard, we probably should have come to the same decision upon it as the revising barrister has given. (a)

WILLIAMS J. At one time I thought this difficulty might be got over, but upon looking into the case I find that two of the appellants have a residence within seven miles of the boundary of *Lyme*, while the other two have not, unless, indeed, they can be said to reside at *Springfield House*. The claims of the parties, therefore, do not depend on the same points of law, and consequently, this is not a *consolidated*, but a *joint* appeal, which the revising barrister had no power to reserve.

Appeal struck out.

(a) This intimation of the learned Judge's opinion will probably set at rest the two main questions which were intended to be raised by the appeal. The finding of the revising barrister "that the house was not reasonably adapted to be contemporaneously inhabited by the appellants and their families &c." seems fatal to the

sufficiency of the occupation and the residence. The *motives* of the parties would not invalidate their title to vote, if the occupation and residence were established. See *Whithorn v. Thomas*, antè, Vol. i. p. 131. 133., per *Tindal C. J.* and *Coltman J.*; and *Alexander v. Newman*, antè, Vol. i. p. 412., per *Tindal C. J.*

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WATSON, Appellant, and COTTON, Respondent. *November 18.*

AT a court held before *George James Philip Smith*, Esq., the revising barrister for the borough of *Bewdley*, *Charles Watson* objected to the name of *William Cotton* being retained on the list of persons entitled to vote in the election of a member to serve in parliament for the said borough, in respect of a wharf and building in *Bridge Street*, in the hamlet of *Lower Mitton*, within the said borough. The facts of the case were as follows:—

William Cotton occupied a wharf and shed in *Bridge Street*. The shed stands against a wooden paling, the boundary of the wharf, but is not fastened to it. Six posts, put into the ground, support a tarpauling or tar cloth, which forms the roof. One of the sides of the shed is boarded up with boards, fastened to the posts by nails. *The shed is used for purposes connected with the occupation of the wharf.* *William Cotton* put into it his barrows, shovels, and coal baskets, and one *Marks*, who rented a part of the wharf from *William Cotton*, for the purpose of making hoops, was allowed to put hoops and poles into the shed during six months, paying wharfage for the use of it. The revising barrister decided that this was a building within the meaning of the 27th section of the 2 *W. 4. c. 45.*, and, therefore, retained the name of *William Cotton* on the list of voters for the said borough.

A shed stood against the wooden paling of a wharf, but was not fastened thereto; it had a tarpauling roof, supported by six posts put into the ground, and one of its sides was boarded up, and fastened to the posts by nails. The shed was used for purposes connected with the occupation of the wharf, barrows, hoops, poles, &c. being put into it, and wharfage paid for its use. The barrister having decided, that the shed was a building within the stat. 2 *W. 4. c. 45. s. 27.* Held, that his decision must be affirmed, since, for any thing that appeared to the contrary, the shed might be a building in the nature of a "warehouse."

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Gray, for the appellant. The occupation of the wharf alone would not be sufficient to constitute a qualification, land only going in aid of a building, to make up the required annual value. But the shed described in the case is not a building within the meaning of the Reform Act. It is not every erection that will satisfy the words "other building" in the 27th section. The shed is neither a house, warehouse, counting-house, nor shop; neither is it a building of a similar kind to any one of these. To come within the act, a building must be something substantial, and of a permanent character, whereas this shed may have been erected only for a temporary purpose. In *Whitmore v. The Town-clerk of Wenlock* (a), where a cow-house or stable was held to be a building within the act, the structure was substantially built of stone, the roof was tiled, and it had a door with a lock and key. A building is not *ejusdem generis* with those enumerated in the section unless it be inclosed. From the statement in the case, that *one* of the sides of the shed is boarded up, it must be taken for granted that the other sides of it are open, and exposed to the weather. [*Maule J.* The revising barrister certainly has not described the shed fully, for it must have three sides at least, and he only tells us what one of them is made of; but the question he must mean to refer to us is, whether the circumstances stated in the case make it impossible that the shed should be a "building."] If the case be insufficiently stated, the Court will remit it to the revising barrister to supply a further statement of facts. [*Wilde C. J.*

(a) *Antè*, Vol. I. p. 10.

We cannot countenance any proceeding of that kind, unless we are unable to see our way to a decision. What we have to determine is, whether the facts stated in the case prevent the shed from being a building within the act. In the *London Docks* there are very extensive and valuable buildings, which may be called sheds. They have a roof, but no covered sides, and they are used for warehousing goods which are not likely to suffer by exposure to the weather. A hay-barn in a farm-yard might also be called a shed.] Merely *calling* a building a shed would not exclude it from being a building within the meaning of the act, but it never could have been intended by the legislature that such a shed as that described in the case should confer the elective franchise.

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Byles Serjt., for the respondent, was not called upon by the Court.

WILDE C. J. The revising barrister has found that the erection in question is a building within the meaning of the act of parliament, and unless the Court be of opinion that it cannot be such a building, his decision must stand. It is very difficult in many cases to decide what is and what is not a building within the act, but no such difficulty occurs here. The 27th section of the Reform Act, among other buildings in respect of the occupation of which the franchise is conferred, mentions a "warehouse." Now, would a warehouse cease to be a warehouse, though used for the deposit of goods, because its sides were open? I do not think it would. But the shed described in the case has two

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of its sides closed, for it stands on one side against a wooden paling, which is the boundary of the wharf, and on another side it is boarded up with boards, which are nailed to the posts which support the roof. It is used for purposes connected with the occupation of the wharf, and barrows, shovels, and other articles are deposited therein. It is said that a building, to come within the act, must be *ejusdem generis* with those which it enumerates, but a warehouse is used for the deposit of goods, and this shed is used by the occupier for the deposit of certain things connected with the enjoyment of the wharf. It is stated also that one *Marks*, who rented a part of the wharf from the respondent, was allowed to put hoops and poles into the shed, paying wharfage for the use of it. Why, then, may not this shed be considered a warehouse for the purpose of warehousing his hoops and poles? Its being a warehouse does not depend upon the nature of the articles which are deposited there, but upon its capacity to hold and protect them. When, therefore, the revising barrister finds this shed to be a building, I must presume it to be a building within the act, unless the facts stated in the case prevent my coming to that conclusion. I ought, I apprehend, to see distinctly that his decision was wrong, before I assent to its reversal. What he states in the case is quite consistent with the possibility of the shed's being a building within the meaning of the act, and, therefore, I think that his decision ought to be affirmed.

COLTMAN J. I am of the same opinion. I think it is more a question of fact than of law whether a parti-

cular description of building is a building within the meaning of the act, or not. It seems to me that the mere circumstance of the two sides of the shed being open does not shew that it is not a building of a kind similar to the other buildings mentioned in the 27th section of the Reform Act. The barrister has found that it is a building within the act; and unless we can see clearly that it cannot be such a building, we cannot interfere to alter his decision.

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MAULE J. It is not disputed that a shed is a building; but the question raised by Mr. *Gray* is, whether this particular shed was a building of that restricted description contemplated by the Reform Act. I think that question has been rightly decided by the revising barrister; at least, there is nothing in the case to shew that his decision was wrong. When once you have established the fact that a certain thing is a building, the only further question to be decided is, what are the uses to which it may be put? If it can be put to any uses like those to which the buildings specifically mentioned in the act are applied, that is sufficient to make it a building within the statute. Suppose, instead of this shed being erected in a way which, as far as one can conjecture from the statement of the revising barrister, is not extremely substantial, it had been built in a more substantial manner. I think if a shed, with no more than two of its sides closed, had been built with great solidity, and at a great expense, nobody could doubt that it was a building within the act, if it was capable of being used for the purposes to which the shed in this case was actually applied. Then, as we

1847. cannot see from the facts stated in the case that the barrister's decision was wrong, we must affirm it.

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WILLIAMS J. concurred.

Decision affirmed with costs. (a)

(a) Before the passing of the Registration Act, there was no question on election law which it was considered so difficult to answer as this — What is a "building" within the meaning of the 27th section of the Reform Act? The text-writers, including Mr. Rogers, Mr. Elliott, and Mr. Cockburn, essayed to explain the intention of the Legislature; but the definition eluded their grasp; and in the meantime the decisions of the revising barristers were, to use Mr. Cockburn's words, "conflicting in the extreme." The difficulty has now changed sides. It will not be easy, in future, to say what is not a "building," however slight and unsubstantial the structure may be, provided there be a roof to it. With the exception of a drain, and a bridge which has no dry arches, it hardly seems possible to imagine any building covered at the top which might not be used in the nature of a warehouse. It does not appear to be necessary that it should be actually used for that purpose. The language employed by Lord Chief Justice Wilde and Mr. Justice Maule in delivering their judgments seems clearly to shew that if a building be capable of holding and protecting any articles, whether of a perishable nature or not, it may fairly be considered a ware-

house. This view of the case is strengthened by the terms in which the latter learned Judge expressed himself in *Whitmore v. The Town-clerk of Wenlock*, ante, Vol. I. p. 17. Farm-buildings, sheds, and outhouses of every description, therefore, would seem to be warehouses within the meaning of the act. Thus a coach-house, a brew-house, a dairy, a tool-house, or an arbour in a garden, would be comprehended by it. A cowhouse or stable has already been decided to be a building *ejusdem generis* with a warehouse, on the ground that goods might be put there; and, as the nature of the articles deposited does not affect the question, there seems to be no reason why a party may not be qualified to vote for a borough in respect of his occupation of a fowl-house, a donkey-shed, or a pig-stye, if the land occupied therewith will make up the required annual value.

A question of subordinate importance was evidently intended to have been raised by the case, namely, whether a building which is ancillary to the occupation of land comes within the provisions of the 27th section of the act. The point was ventilated at the bar in *Whitmore v. The Town-clerk of Wenlock*; but the Court were of opinion that it was not sufficiently raised by

the statement of facts, Mr. Justice *Maule* observing, "I do not find it stated in the case that the building was *erected* or *used* for the more convenient occupation of the land. It only says that the building was conveniently *placed* for the occupation." In the present instance the qualification depended on the occupation of a *wharf* and shed; and the case, adopting the language of the learned Judge, states that the shed was *used* for purposes connected with the occupation of the wharf. No objection, however, to the sufficiency of the qualification on that ground was made by the counsel for the appellant; probably because he did not think it tenable. And no such objection seems to have presented itself to the

mind of the Court; on the contrary, the judgment of the Lord Chief Justice proceeded, to some extent, on the fact that the shed *was used* for purposes connected with the occupation of the wharf. It would require, indeed, considerable ingenuity to point out any reason why a building, jointly occupied with land, should not subserve the occupation of that land. The opinion that it was not meant to confer the franchise on the occupier of a building applied to such a purpose appears to have been founded on the speeches delivered in parliament during the progress of the Reform Bill, instead of the language of the Reform Act, the only legitimate expression of the meaning of the Legislature.

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ONIONS, Appellant, and BOWDLER, Respondent.

November 18.

THIS was a consolidated appeal from the decision of *Henry Blencowe Churchill, Esq.*, the revising barrister for the borough of *Shrewsbury*.

John Bowdler objected to the name of *Henry Onions* being retained on the list of 10*l.* occupiers for the parish of *St. Alkmond*, in the said borough. The list stood thus:—

Christian Name and Surname of each Voter.	Place of Abode.	Nature of Qualification.	Street, Lane, or other Place in the Parish where the Property is situate.
Henry Onions, Baker.	Butcher Row.	House in succession.	Butcher Row.

The nature of a voter's qualification for a borough was stated in the list of 10*l.* occupiers to be "house in succession," and the situation of the property, "*Butcher Row.*" His qualification consisted in the successive occupation of two houses, one at *Colcham*, the other in *Butcher Row*. *Held*, that the revising barrister had no

power, under the stat. 6 *Vict.* c. 18. s. 40., to amend the description in the fourth column, by adding "*Coleham*" thereto, as he would thereby have inserted a different qualification from that stated in the list.

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Henry Onions occupied two houses in immediate succession. It was proved that he had removed from *Coleham*, in the parish of *St. Julian*, to *Butcher-Row*, in the parish of *St. Alkmond*, on the 1st *May*, 1847. Both parishes are within the borough. The revising barrister was required to amend the third column by making it "*houses in succession*," and the fourth by inserting "*Coleham*;" and he held, that he had no power to do so, on the ground that both the qualifying properties occupied in succession should be stated in the list, and he therefore expunged the name.

Whateley, for the appellant. The revising barrister ought to have exercised the power of amendment given to him by stat. 6 *Vict. c. 18. s. 40.*, which provides that wherever the place of abode, or the nature of the qualification, or the local or other description of the property of any person who shall be included in any such list shall be wholly omitted, or the place of abode, or the nature or description of qualification, shall be insufficiently described for the purpose of being identified, the barrister is to expunge the name of every such person from such list, unless the matter or matters so omitted or insufficiently described be supplied to his satisfaction; when he is to insert the same in such list. In *Bartlett v. Gibbs (a)*, where it was held that the barrister had not power to amend a misdescription of the qualification, the ground upon which the judgment of the Court proceeded was that the list gave no notice of the voter's change of occupation, the only word under the third column being "house." But here that

(a) *Antè*, Vol. I. p. 73.

objection cannot apply, as the words "house *in succession*" indicate that the tenant occupied more than one house during the qualifying period. Then, as there was evidence before the revising barrister which would have enabled him more clearly to define the qualification, he ought to have amended the description of it in the way in which he was required to do. In *Flounders v. Donner* (a), the question was whether it was necessary that the numbers of two houses occupied in succession should be stated in the list, and *Erle J.* observed that if the number of the first house were supplied, the revising barrister had the power to insert that number, and it was his duty to do so. *Hitchins v. Brown* (b) was also cited.

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Keating, for the respondent. This is substantially an application to the Court to overrule *Bartlett v. Gibbs*. (c) The only difference between that case and the present is the addition of the words "in succession" in the third column, but the principle of the decision makes that addition unimportant. Where a party claims in respect of successive occupation, he founds his right to vote upon every set of premises which he has occupied, and in that case, to use the words of *Tindal C. J.* (d), "the registration list should afford such information of the nature and situation of the premises, in respect of the occupation of which each person claimed a right to vote, as would enable the other voters to ascertain by inquiry the sufficiency of the occupation and value of such premises." Nobody would have the slightest information imparted to

(a) *Antè*, Vol. I. p. 365.

(b) *Antè*, Vol. I. p. 328.

(c) *Antè*, Vol. I. p. 73.

(d) *Antè*, Vol. I. p. 91.

1847. him by the words "in succession." In *Flounders v. Donner* (a) and in *Hitchins v. Brown* (b) the situation of the two houses occupied in succession was correctly stated in the fourth column of the list, which is not the case here.

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Whateley, in reply. If the name of the party only had appeared in the list, and the other columns had been left blank, the barrister would have power, under the 40th section, to describe the place of his abode, the nature of his qualification, and the local situation of the qualifying property. Why should such powers be conferred where there is a total omission of description, and be withheld when the omission is partial only? It is submitted that the proviso, by which it is enacted, that "no evidence shall be given of any other qualification than that which is described in the list," means that no evidence shall be given of any other kind of qualification than that which is stated in the third column. The omission of "*Coleham*" in the 4th column is an error (if it be an error) of the overseers, and the Court will not visit the appellant with the loss of the franchise, for a mistake in a list over which he had no control.

WILDE C.J. It appears to me that the decision of the revising barrister was right, and that he had no power to make the amendment prayed for. The case of *Bartlett v. Gibbs* (c) decided that when the right to vote arises out of the occupation of two houses in succession, both must be described in the list; and I apprehend

(a) *Antè*, Vol. I. p. 365.

(b) *Antè*, Vol. I. p. 328.

(c) *Antè*, Vol. I. p. 78.

that the good sense, and indeed the necessity of that decision, with reference to the object of the act of parliament, must be quite clear. The legislature intended that, when a vote is claimed in respect of a house, parties should have reasonable means of inquiry into the value of the premises, and the sufficiency of the occupation, and therefore the list is required to inform objectors of the situation of the property in respect of the occupation of which the vote is claimed. It is clear that, when the franchise is given in respect of the successive occupation of different houses, it is just as important that the situation of the one house should be described, as the locality of the other, in order that persons may ascertain in each case that the value and the occupation are sufficient. The Court held, therefore, in *Bartlett v. Gibbs* (a) that as the situation of one house only was stated in the list, there had not been a sufficient compliance with the provisions of the act of parliament. They even went further, and decided that the revising barrister had not the power of adding the local description of the other house, which had been omitted in the list of voters. That being so, the question here is, whether such a description has been given of the property as the Court thought, in that case, was necessary. It is quite clear that no such information has been afforded. The case, indeed, is worse than that of *Bartlett v. Gibbs* (a), for, instead of an omission of something which ought to have been described, there is a false description. Nobody had a right to presume from this list that the appellant occupied any other premises than in *Butcher Row*, and if upon inquiry it were

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(a) *Antd*, Vol. I. p. 73.

1847. found that he had only occupied one house there, and that for a period not sufficiently long to confer the franchise, the objector would not think it necessary to go further. If afterwards, on the objection being taken, the appellant could at the last moment supply the fact of an occupation at *Coleham*, when all opportunity for inquiry is gone by, the intention of the act would be defeated. The 40th section of the stat. 6 *Vict. c. 18.* enables the barrister to make amendments when the description of the property is wholly omitted, or when it is insufficiently described for the purpose of being identified; but as it was thought that these words gave too large a power of amendment, a proviso was added, that "no evidence shall be given of any other qualification than that which is described in the list of voters or claim, as the case may be, nor shall the barrister be at liberty to change the description of the qualification as it appears in the list, except for the purpose of more clearly and accurately defining the same." How does the amendment which the barrister was asked to make define any thing more accurately than it was described before? The addition of "*Coleham*" to "*Butcher Row*" would not define "*Butcher Row*, being wholly independent of it, and would be a substantial addition of *other property*, for the purpose of more clearly defining the same. With respect to *Hitchins v. Brown* (a), the fourth column stated distinctly the situation of the two houses in respect of which the qualification was claimed, and therefore every information was given which the statute required. The case of *Flounders v. Donner* (b) only decided that, when there is a successive occupation,

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(a) *Antè*, Vol. I. p. 328. ... (b) *Antè*, Vol. I. p. 365.

the numbers of the houses occupied, if numbered, should be stated in the list. On the question of the barrister's power to amend by adding the number of a house, three of the judges expressed no opinion, as the point was not raised by the case, but *Erle J.* appears to have thought that if the number of the house had been supplied, it was the duty of the barrister to have inserted it. That case does not at all apply to the present, for here there appears to be an omission of something which, if added, would not define what had gone before, but which would be an addition of substantial new matter.

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COLTMAN J. I am of the same opinion. It is said that as the list is made out by the overseers, and not by the party interested, he ought not to suffer for their blunders; but the act provides that the party may look at the list, and if not satisfied with the description of his qualification as it appears thereon, may send in a fresh notice of claim. If he does not look at the list, he alone is in fault. *Vigilantibus, non dormientibus, jura subveniunt.* The question here is, how the qualification described in this list is to be understood. "House in succession" in the third column may imply the successive occupation of two houses, but the fourth column shews that the place where the property is situate is in *Butcher Row*. The proposed amendment would have described a different qualification from that stated in the list, and it is quite clear that the revising barrister was right in holding that he had no power to make such an alteration.

MAULE J. I agree that the power which the revising barrister was asked to exercise was one which

1847. he did not possess. The powers of amendment given by the 40th section are limited to cases of total omission and of insufficient description, and in the latter case they can only be employed for the purpose of more clearly defining the qualification. In the present case, taking the two columns together, the qualification of the appellant is described as consisting of "houses occupied in succession, in *Butcher Row*." Now, the case does not suggest any obscurity or inaccuracy in the description of *Butcher Row*. What the barrister was asked to do was, to add a place different from *Butcher Row*, not to define *Butcher Row* more accurately. It is clear that he had no such power.

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WILLIAMS J. Taking the most liberal view of the description given of the qualification, it appears to be "houses in succession, in *Butcher Row*, in the parish of *St. Alkmond*." It was sought to change the description by adding "*Coleham*," which is in the parish of *St. Julian*. If the revising barrister had done so, he would have inserted a different qualification from that stated in the list.

Decision affirmed, with costs.

CASES

ARGUED AND DETERMINED

1848.

IN THE

COURT OF COMMON PLEAS,

UNDER THE STAT. 6 VICT. c. 18.

IN

HILARY AND EASTER TERMS,

IN THE

ELEVENTH YEAR OF THE REIGN OF VICTORIA.

ALDWORTH, Appellant, and DORE, Respondent. *January 20.*

THIS was a consolidated appeal from the decision of the revising barrister for the borough of *Abingdon*. When the case was called on in its turn in *Michaelmas* term (*November 18th*), the respondent did not appear.

Where the respondent does not appear, and no notice has been served upon him of the appellant's intention to prosecute the appeal, pur-

suant to stat. 6 *Vict.* c. 18. s. 64., the Court will not postpone the hearing, unless it be shewn that the respondent has acted with bad faith, or that there is some other substantial ground for the adjournment.

At the revision it was agreed between the appellant and the respondent, that the revising barrister should draw up the case at his leisure, and that all formalities incidental thereto should be considered as duly observed. On the 30th *October* the case, duly stated by the revising barrister, reached the appellant's solicitor. Notice of the appellant's intention to prosecute was served on the respondent on the 5th *November*, the 11th *November* being the first day appointed by the Court for hearing appeals. *Held*, that the Court had no jurisdiction to hear the appeal, ten days' notice not having been given, nor to postpone the hearing, the appellant not having been misled by the respondent's undertaking to appear and argue the appeal.

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W. J. Alexander, for the appellant, stated that he was not prepared with an affidavit of the respondent's having had ten days' notice of the appellant's intention to prosecute the appeal. There had been an understanding between the parties, that the respondent should appear, in which case such an affidavit would have been unnecessary. It would be a hardship on the appellant to require him to come armed with affidavits, because it was just possible that an agreement might be violated. He submitted that the Court might postpone the hearing under the proviso of the 64th section of the Registration Act, in order that he might procure the necessary affidavit, and referred to *Newton v. The Overseers of Mobberley*, where *Tindal C. J.* said (a), "As it appears that the appellant has been lulled into security by the conduct of the respondents, I think the appeals may, under the circumstances, stand over till the next term."

COLTMAN J. (b) The case may stand over till the next day for hearing appeals.

Appeal to stand over accordingly.

Alexander (with him *Davison*), now applied for leave to proceed with the appeal. From the affidavits upon which he moved, it appeared that at the revision which began on the 8th of *October*, 1847, it was agreed upon by the advocates on both sides, that all cases for the opinion of the Court of Common Pleas should be reserved till the end of the revision, and that all formalities should be admitted to have been duly observed.

(a) *Antè*, Vol. I. p. 336.

(b) *Wilde C. J.* had just left the Court.

At the end of the revision, which lasted three days, it was agreed that the present parties to the appeal should be respectively appellant and respondent, and that all requests and notices necessary to be given, should be considered as actually then done, and the case as actually then drawn and settled by the revising barrister in Court; and that the revising barrister should draw up the case at his first leisure (all formalities incidental thereto being considered as duly observed), and transmit it to the appellant's private solicitor at *Abingdon*. The case, as stated by the revising barrister, was forwarded by him from *London* on the 29th of *October*, and on the 30th of *October*, reached the appellant's solicitor at *Abingdon*. On the 1st of *November*, the solicitor sent the case up to his agent in town, with instructions to obtain the opinion of counsel thereon. The opinion was obtained and forwarded to *Abingdon* on the 2d of *November*, and on the 5th of *November*, the respondent was served with notice of the appellant's intention to prosecute the appeal.

An affidavit was also produced to shew that on the 31st of *December*, the appellant had served the respondent with a fresh notice of his intention to prosecute.

Alexander. The respondent has now been served with the notice required by the act, and therefore the appellant is entitled to be heard upon the merits of the appeal. [*Cresswell J.* You must first satisfy us that there were circumstances to warrant an adjournment of the hearing. You stand in the same situation now as if this were the day on which the case was originally called on. *Maule J.* At present you are not in a condition to ask for judgment.] It is contended that,

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1848. under the circumstances disclosed by the affidavits, the
appellant had not reasonable time to give a regular
notice. The parties agreed to waive all formal points,
and the appellant was consequently thrown off his
guard. [Wilde C. J. The affidavits do not shew any
bad faith on the part of the respondent, and the dis-
pensation with formalities only relates to what was
necessary to be done before the case was settled.
Maule J. We must look at the case now, as if this
were the first day appointed for hearing appeals. (a)
The case is called on, and the respondent does not
appear. Have you an affidavit of ten clear days' notice
having been given to the respondent? No. You then
apply for a postponement of the hearing, upon the
ground that the appellant had not reasonable time to
give such notice. But the affidavits on which you rely
fail to shew that you had not a reasonable time. The
appellant was not in any way misled by the respondent.]

WILDE C. J. I am of opinion that the appellant is
not in a situation to ask for the judgment of the Court,
and that the only course which we can take is to strike
out and dismiss the appeal. I will suppose this to be
the first day appointed for hearing appeals. The
appellant only appears, and asks for judgment in his
favour. The Court must then inquire whether he has
an affidavit of ten days' notice having been given to the
respondent. The appellant says, "I have no such
affidavit, because I have been misled by the conduct of
the other side into the belief that the respondent would
appear, and therefore I ask for a postponement of the

(a) See *Norton v. The Town Clerk of Salisbury*, ante, Vol. I. p. 538.

hearing, to shew that this is the fact." The hearing is postponed accordingly; but when we come to look at the affidavits we find that they refer exclusively to arrangements between the parties when before the revising barrister. To dispense with the production of an affidavit of notice to the respondent, the appellant should have been prepared to shew that he was misled on the subject of the respondent's appearance here. The duty of the Court is therefore quite plain and simple, namely, to strike out the appeal. I have a strong opinion upon the necessity of adhering strictly to the provisions of this act of parliament, and we ought not to hold that the proviso in the 64th section applies, except upon substantial grounds. Without saying that cases may not arise in which the Court would have power to dispense with the affidavit of notice to the respondent, I do not think that any ground at all has been made out in the present instance for such an interposition.

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MAULE J. I am of the same opinion. The reasons for my opinion I have already stated.

CRESSWELL J. and WILLIAMS J. concurred.

Appeal struck out. (a)

(a) The decision of the court in *Norton v. The Town Clerk of Salisbury*, ante, Vol. I. p. 538, had the effect of clearing the list of appeals of more than one half of the cases reserved by the revising barristers in 1846. Wherever ten clear days' notice of the appellant's intention to prosecute had not been given, the respondent,

satisfied with the barrister's decision being in his favour, took care not to appear, and, in default of the necessary affidavit, the court ordered the appeal to be struck out of the list. Similar results followed a similar neglect in 1847, and may again occur in 1848. It may be as well, therefore, to point out to appellants that they will incur

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little risk of expense or inconvenience if they serve the respondent with notice of intention to prosecute as soon as the barrister has named the parties to the appeal. Except under certain circumstances, which will be presently noticed, the conduct of the appeal is given, by the 64th section of the Registration Act, to the *appellant*; and if in the interval of time which may elapse between the decision of the barrister and the fourth day of *Michaelmas* term, he should determine not to prosecute the appeal, he may let the matter drop. The appeal then cannot be entertained unless the court or a judge should, on the application of a party interested, give him the conduct of the appeal; *see* sections 45, 64. It is not very probable that the respondent will make such an application. He enjoys the substantial results of the contest, and the chief inducement to his prosecution of the appeal would be the *chance* of the decision being affirmed *with costs*. It is even possible that he may have to

pay the costs of the appellant, if he proceeds. No case, indeed, has yet occurred in which the respondent has been ordered to pay costs; but there seems to be no reason why he should not. Both parties to the appeal may be considered as actors, and barristers have been sometimes known to entertain so much doubt about a case as to declare their readiness to make either party appellant or respondent. The legislature certainly contemplated such an event as payment of costs by the respondent, as the stat. 6 *Vict. c. 18. s. 70.* forbids the court "to make any order for costs *against* or in favour of *any respondent* or person named as respondent," unless he shall appear before the court to support the decision of the barrister. In *Burton v. Gery*, *antè*, p. 10, the appellant's counsel did apply for the costs of the appeal. The court refused the application; but threw out no intimation of an opinion that an appellant *might not* have his costs allowed.

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WATSON, Appellant, and PITT, Respondent.

January 20.

AT a Court held before *George James Philip Smith*, Esq., the barrister appointed to revise the lists of voters for the borough of *Bewdley*, *Charles Watson* objected to the name of *Francis Pitt* being retained on the list of persons entitled to vote in the election of a member to serve in parliament for the said borough in respect of a house and land in the hamlet of *Wribbenhall*.

The facts of the case, as originally stated by the revising barrister, were as follows:—

William Taylor, on behalf of the objector, went to the house of the said *Francis Pitt*, between nine and ten o'clock in the evening of the 25th of *August*, 1847. He knocked at the door of the house several times, and no person answered. He thereupon put a due notice of objection, signed by the said *Charles Watson*, within the house. This was the only occasion on which he attempted to serve the said notice.

The revising barrister decided that this was not a sufficient service of the notice of objection, and retained the name of *Pitt* upon the list.

The appeal came on for argument in *Michaelmas* term, *November* 18th, when the Court directed the statement of the matter of the appeal to be remitted to the revising barrister to be more fully stated, as to whether the service of the notice of objection was made at the voter's place of abode mentioned in the list, and whe-

The sufficiency of the service of a notice of objection is a question of fact for the revising barrister, with whose decision the Court will not interfere.

Service of a notice of objection was stated to have been made by putting the notice and leaving it within the entrance door of the respondent's place of abode mentioned in the list of voters, between nine and ten o'clock on the night of the 25th of *August*. The revising barrister held that this was not a sufficient service, within stat. 6 *Vict.* c. 18. s. 17., and the Court affirmed his decision.

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ther the said notice was left there, and also as to the ground on which the revising barrister came to the conclusion that the facts found by him did not establish a sufficient service of such notice.

The barrister accordingly found the following additional facts: viz. That the service of the said notice was made at the voter's place of abode mentioned in the list, and that the said notice was put inside the said door, which was the usual entrance door of the said house, and was left there. And he stated to the Court as the ground of his decision that he was of opinion that the time and mode of the service of the said notice were unreasonable, and that some further attempt to leave the said notice with some person at the said house of the said *Francis Pitt* ought to have been proved in order to satisfy the provisions of the stat. 6 *Vict. c. 18. s. 17.*

Gray, for the appellant. The notice of objection was duly served. The stat. 6 *Vict. c. 18. s. 17.* requires the objector to give or "cause to be left" at the place of abode of the person objected to, as stated in the list, a notice of objection. The notice was put inside the usual entrance door of the house, and was left there. The Court will not presume fraud, and therefore it must be taken that the notice was left in such a manner as to come to the knowledge of the party who was to receive it. Although, therefore, the barrister has found that the mode of service was unreasonable, the facts which are stated in the case shew that the act has been complied with in this respect. Then, with regard to the time at which the service was effected, which the barrister has also found to be unreasonable, it is sub-

mitted that the objector has the whole of the 25th of *August*, up to 12 o'clock at night, to serve the notice of objection. [*Wilde C. J.* Would notice of dishonour of a bill of exchange be sufficient, if given after 9 o'clock at night?] Perhaps not; but the words of the act are express that the objector shall have the 25th day of *August*, which must mean the whole of that day. Before the rule of Court (a), which requires notices of proceedings in courts of law to be served before 9 o'clock at night, service after that hour was perfectly good.

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Byles Serjt., for the respondent. The statute does not mean that the notice shall be served at any time of the day, but within reasonable hours. The 17th section of the Registration Act requires that notice shall be given to the overseers, as well as to the party objected to, and the stat. 2 *W. 4. c. 45. s. 79.* provides, that "wherever any notice is by this act required to be given to the overseers of any parish or township, it shall be sufficient if such notice shall be delivered to any one of such overseers, or shall be left at his place of abode, or at his office or other place for transacting parochial business." It must have been intended by the legislature, therefore, that the notice should be delivered within the usual business hours. [*Maule J.* Personal service would be good, though effected after nine o'clock at night.] If this had been a notice to quit, the service would not have been sufficient. It was left at the respondent's dwelling-house between nine and ten o'clock at night, when he must be presumed to have been in

(a) *H. T. 2 W. 4. r. 50.*

1848. bed. [*Maule J.* It was left at a house which may or may not be his true place of abode, but it is his place of abode as described in the list.] With respect to the mode of the service, the barrister has found it to be unreasonable. The notice might have been put under the door-mat, and if there be any conceivable mode of leaving the notice inside the door, which would amount to an insufficient service, the Court will not disturb the decision of the barrister on a question of fact.

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Gray replied.

WILDE C. J. I am of opinion that the decision of the revising barrister was right, and ought to be affirmed. The words of the statute require the notice to be "left" at the voter's place of abode, and it is quite clear that there are many modes in which the words of the statute might be satisfied without satisfying its meaning. One of the modes suggested, when the case was formerly before the Court, was putting the notice down the chimney. I understand the meaning of the statute to be that the notice shall be left at the house at such a time, and in such a mode, as will afford a reasonable presumption that the paper reached the hands of the person for whom it was intended. Now, what was the nature of the evidence produced before the revising barrister to shew that the meaning of the statute had been satisfied? The facts proved are, that, between nine and ten o'clock in the evening of the 25th of *August*, a person went to the house of the respondent, and knocked at the door several times; that no person answered; that he then put the notice inside the entrance door of the house; and that this was the

only occasion on which he attempted to serve the notice. The revising barrister finds, also, that the service was made at the voter's place of abode mentioned in the list, which might not be his place of abode on the 25th of *August*. (a) The barrister then goes on to say that he was of opinion that the time and mode of the service of the notice were unreasonable, and that some further attempt to leave it with some person at the respondent's house ought to have been proved, in order to satisfy the provisions of the statute. It was left in uncertainty whether there was any person in the house or not; and the revising barrister seems to have thought that fact ought to have been ascertained. All that the party sent to serve the notice did, was to put it inside the door; and I can conceive many cases in which a notice might be put inside the door of a house without any probability of its being seen by the party for whom it was intended. I consider that no objection can be made to the *time* of the service, if it be not accompanied by other circumstances which would prevent the receipt of the notice; but then the party who serves a notice at a late hour must be fully prepared to shew that he did so under such circumstances as to afford an ordinary chance of its reaching the hands of the person to whom it is addressed. Whether there was such a service in this case was, I think, a question of fact for the revising barrister; but if the Court can consider the question at all, then I must say that I think the revising barrister was right.

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(a) See *Allen v. Greensill*, *antè*, Vol. I. p. 592. The Court did not, when the case was remitted to the revising barrister, direct him to state whether the place of abode mentioned in the list, was also the respondent's true place of abode when the notice was left.

1848. MAULE J. I also think that the sufficiency of the
 service was a question of fact, and that we have no
 right to review the barrister's decision upon it.

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CRESSWELL, J. and WILLIAMS J. concurred.

Decision affirmed, with costs.

EASTER TERM.

May 12. BURTON, Appellant, and LANGHAM, Respondent.

The committee of a lunatic's estate, under letters patent from the Crown, who takes possession of a part of the lunatic's estate, after an occupying tenant has left, and continues to manage such part on his own account, and in the annual accounts returned to the Court of Chancery, and allowed, enters himself as tenant at a certain rent in respect of the same, with the receipt of which he charges himself, is not a tenant; and, consequently, is not entitled to a vote for the county, pursuant to stat. 2 W. 4. c. 45. s. 20.

AT a Court held before Sir John Eardley Eardley Wilmot, Bart., the barrister appointed to revise the lists of voters for the Southern Division of the county of Northampton, Edmund Singer Burton objected to the name of Herbert Langham being retained on the list of voters for the parish of Cottesbrooke, in the said division of the said county.

The facts of the case, as originally stated by the revising barrister, were as follows:

Mr. Herbert Langham is committee of the estate of his brother Sir James Hay Langham, and holds lands in Cottesbrooke as occupier to the value of 399*l.* per annum. The said Herbert Langham proved that his accounts are from time to time transmitted for examination and approval to the Court of Chancery, and a document was produced by the said Herbert Langham, entitled the 9th account as committee of the estate of Sir J. H. Langham, Bart., bearing the signature of Edward Winslow, one of the commissioners of lunacy,

and the seal of the Court, in which the name of Mr. *H. Langham* appeared as tenant in the tenant's column, at the rent of 393*l.* per annum.

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The said *H. Langham* stated (a), that, after the passing of the accounts, he retained a balance of about 1500*l.*, out of which, after paying a jointure on the estate, he defrayed the expenses of repairs and improvements on the property. He further stated (a), that he was appointed committee on the 21st of June 1837; that he took possession of the lands about *Lady-day*, 1843, succeeding to an occupying tenant, and that he has continued to hold them up to the present time. He also stated (a), that he occupies *Cottesbrooke House* and the adjoining fields. Part of the furniture in the house is his own.

Mr. *Wood*, steward of *Cottesbrooke* estate, stated on oath (a), that he was examined by the Master with the accounts, and that in such examination the specific lands for which Mr. *H. Langham* claimed to vote were inquired into, with a view to their condition and value.

It was objected on the part of the appellant that Mr. *H. Langham*, as such committee, was improperly on the register as tenant under the 20th section of the stat. 2 *W. 4. c. 45*. The revising barrister found that Mr. *H. Langham* held as occupying tenant, and retained his name on the list of voters.

The case came on for argument in *Michaelmas* term, November 11th, when the Court directed it to be remitted to the revising barrister to be restated more fully, *first*, by setting out an extract from the list of voters, shewing the form of the qualification of the

(a) *Sic*, in copy of case. See *Pitts v. Smedley*, *antè*, Vol. I. p. 196, note (a).

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respondent. *Secondly*, by setting out a copy of the grant to the respondent as committee. *Thirdly*, by setting out a copy of the 9th account of the respondent as committee. *Fourthly*, by making a fuller statement of the circumstances under which the respondent took possession of the land; and *fifthly*, by stating whether the respondent retained the produce of the land to his own use, or accounted for it to the estate of the lunatic. The revising barrister, therefore, in obedience to such order of the Court of Common Pleas, proceeded to set out the above points. *First*, the following was the description of the respondent's qualification:—

No.	Christian Name and Surname of each Voter at full length.	Place of Abode.	Nature of Qualification.	Street, Lane, or other like Place in this Parish or Township, and number of House, if any, where the Property is situated, or Name of the Property if known, or Name of the occupying Tenant, or if the Qualification consist of a Rentcharge, then the Names of the Owners, &c.
2568.	Langham, Herbert.	Cottesbrooke.	Land and House as Occupier.	Cottesbrooke.

Secondly, the following is a copy of the grant to the respondent as committee:—“*Victoria*, by the Grace of God, of the United Kingdom of *Great Britain and Ireland*, Queen, Defender of the Faith; To all to whom these our present letters shall come Greeting: Whereas by a certain inquisition taken at the house of Sir *James Hay Langham*, Bart., situate at *Glyndbourne*, near *Lewes*, in the county of *Sussex*, the 15th day of *December*, in the 7th year of the reign of our late royal uncle *William* the 4th, by virtue of his commission in the nature of a writ *de lunatico inquirendo* in that behalf duly made and issued to inquire (amongst other things) of the lunacy of Sir *James Hay Lang-*

ham of *Glyndbourne*, in the said county of *Sussex*, Bart., it is found (amongst other things), that the said Sir *James Hay Langham* at the time of taking this inquisition is a lunatic, and does not enjoy lucid intervals, so that he is not sufficient for the government of himself and his estate, as by the same inquisition, (amongst other things,) remaining on record may more fully appear. For the tuition of whom, and the management of his estate, it belongs to us to provide. And whereas sufficient security is given to us on the behalf of the said Sir *James Hay Langham*, by *Herbert Langham*, of *Cottesbrooke Hall*, in the county of *Northampton*, Esq., the Hon. *Thomas De Grey* of *Merton*, near *Thetford*, in the county of *Norfolk*, *William Jones Burdett*, of *Twickenham*, in the county of *Middlesex*, Esq., *Frances Burdett*, of *Inglefield Green*, near *Egham*, in the county of *Surrey*, Spinster, and *Henry Burdett Langham*, of *Cottesbrooke Hall* aforesaid, Esq., as in such cases hath been heretofore used; know ye that we of our special grace, and of our certain knowledge and mere motion, have given, committed, and granted, and by these presents for us, our heirs, and successors do give, commit, and grant unto Dame *Elizabeth Langham*, of *Cottesbrooke Hall* aforesaid, widow, the custody of the person, tuition, regulation, and government of the said Sir *James Hay Langham*, from the date of these presents, so long as it shall please us during the continuance of the lunacy of the said Sir *James Hay Langham*. Know ye also, that we of our special grace, and of our own certain knowledge and mere motion, have given, committed, and granted, and by these presents for us, our heirs, and successors do give, commit, and grant unto the said *Herbert Langham* the custody,

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regulation, occupation, disposition, and receipt as well of all manors, messuages, lands, tenements, houses, farms, revenues, services, and hereditaments, with the appurtenances, and all rents, revenues, and profits thereof, which the aforesaid Sir *James Hay Langham* hath or ought to have in possession or reversion, or which by any lawful ways or means at any time or times hereafter may or ought to come, descend, or accrue to the said Sir *James Hay Langham*, or which any other or others hath or may have to the use and profit of the said Sir *James Hay Langham*, in the counties of *Northampton*, *Somerset*, *Sussex*, *Middlesex*, and *Oxford*, or elsewhere within our kingdom of *Great Britain*, as also the custody and government of all the goods and chattels, farms, stock of cattle, wealth, plate, debts, money, jewels, traffick, merchandizes, and other commodities and profits whatsoever to the said Sir *James Hay Langham* belonging, or in any manner appertaining, and also the use and negotiation of the same: To the use and behoof, profit and advantage of the said Sir *James Hay Langham*, and for the maintenance, sustenance, and support of the said Sir *James Hay Langham*, and his family (if he hath any or in time to come may have); and also for the maintenance, preservation, and repair of the messuages, lands, tenements, houses, farms, and the residue of the premises of the said Sir *James Hay Langham*: To have and to hold the aforesaid custody, regulation, occupation, disposition, and receipt of the aforesaid manors, messuages, lands, tenements, houses, farms, goods, and chattels of the said Sir *James Hay Langham*, and all and singular other the premises above given, committed, and granted, or mentioned to be given, committed, and granted unto the said *Herbert Langham*, from the date of these presents, so long as it shall

please us during the continuance of the lunacy of the said Sir *James Hay Langham*; Provided always, that the said *Herbert Langham*, his executors and administrators, shall render a true account of the issues, revenues, and profits of the manors, messuages, lands, tenements, and of the goods, chattels, and debts aforesaid, and of the profits thereof, and of the rest of the premises, once in every year at least, and as often as and whensoever to the Lord Chancellor of *Great Britain*, Lord Keeper, or Lords Commissioners of our Great Seal of *Great Britain* for the time being shall seem meet, and shall obey and fulfil all and every the order and orders of the Lord Chancellor of *Great Britain*, Lord Keeper, or Lords Commissioners of our Great Seal of *Great Britain*, made or hereafter to be made in any ways touching or concerning the premises, or any part thereof, or the issues or profits thereof, or any account or accounts thereof: And further, we will and by these presents grant that these our letters patent, or the inrolment of the same, shall be in and by all things good, firm, valid, and effectual in law, notwithstanding the not reciting, or not rightly reciting, any office or offices, inquisition or inquisitions, made of or concerning the premises, or any of them, or any other thing, cause, or matter whatsoever to the contrary thereof in any wise notwithstanding. In testimony whereof we have caused these our letters to be made patent. Witness ourself at *Westminster*, the 21st day of *June*, in the first year of our reign.

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“ By the Lord High Chancellor of *Great Britain*.

“ *Shepherd.*”

Thirdly, the following is a copy of the ninth account of the respondent as committee. Under the head of

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“receipts for rents from 28th *August* 1845, to the 28th *August* 1846,” appears the following : —

Premises.	Tenants.	Arrears at Lady-day.	One Year's Rent due Lady-day, 1846.	Rents received.	Deduction for Income-Tax.
Cottesbrooke	Langham, Herbert, Esq.	£ s. d. - -	£ s. d. 393 0 0	£ s. d. 393 0 0	£ s. d. 6 3 8

Sworn before Master *W. Brougham*, by the respondent, as to its being a good and true account, and that the several sums of money in the said account mentioned to have been retained and paid, were really retained and paid for the purposes in such account mentioned, &c., and allowed by the commissioner *Edward Winslow*. *Fourthly*, a further statement of the circumstances under which the respondent took possession of the land : — On the 25th *March* 1841, *William Deane*, who rented a farm at *Cottesbrooke*, belonging to Sir *J. H. Langham*, quitted it. *Jeremiah Gaudern*, who also held land, also quitted the occupation at the same time, and Mr. *Herbert Langham*, the committee of the brother's estate, entered upon the occupation of both farms, for which he debited himself in his accounts the sum of 31*l.* 10*s.*, which sum was made up as under, —

The rent paid by <i>Deane</i>	-	-	£27	10	0
Ditto ditto, <i>Gaudern</i>	-	-	4	0	0
			<hr/>		
			£31	10	0

On the 25th *March*, in the year of our Lord 1843, *Thomas Flavell*, who also rented a farm belonging to Sir *J. H. Langham*, at *Cottesbrooke*, with the house and premises therein, at the rent of 21*l.* per annum, quitted the occupation of the said farm, house and premises,

when Mr. <i>H. Langham</i> entered upon possession of it,	1848.
and charged himself with the same sum as <i>Flavell</i> had	BURTON
paid for rent, viz. : —	v.
And with the	LANGHAM
Making total rent	

The above is the occupancy upon which the respondent made his claim for a vote, the greater part of which he still occupies with the premises, *i. e.* *Cottesbrooke* house; and in consequence of *Gaudern*, the tenant of the park and other land at *Cottesbrooke*, having become insolvent, Mr. *Langham* entered upon the occupation of the said park, and another portion of *Gaudern's* take adjacent to the park. In consequence of the above additions, the sum charged by the respondent for rent at *Lady-day*, 1846, for the whole of the land which he occupies, amounted to the sum of 393*l.* The extent of the lands held by the respondent amounts to two hundred acres. Mr. *Wood*, the bailiff of the estate, on the respondent's annually passing his account, makes a report, verified by affidavit, as to the general condition and costs of repairs of the estate. It did not appear in evidence before the revising barrister, that Mr. *Langham* had the power of making any leases of the land belonging to the lunatic. It also appeared by the evidence of Mr. *Langham*, that since his appointment as committee he had actually paid no rent, and that no receipt was given to him by any person, but he had debited himself with the above annual sums, and that the balance now in his hands was upwards of 1,600*l.* *Fifthly*, the respondent receives the produce of the lands held by him at *Cottesbrooke* entirely to his own use and benefit, and does not account for any part of it to the estate of the lunatic. The sum stated by

1848. the respondent as rent paid for the said land is included
 with the accounts of the rents of the other tenants on the
 estate, as will be seen by reference to the ninth account.

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Humfrey for the appellant (in *Hilary* Term, *January* 20th). The respondent did not occupy as tenant within the meaning of the stat. 2 *W. 4. c. 45. s. 20.*, which extends the right of voting in counties to any person "who shall occupy as tenant any lands or tenements for which he shall be *bonâ fide* liable to a yearly rent of not less than 50*l.*" The committee of a lunatic's estate has none of the liabilities, rights, or privileges of a tenant. He has the custody and disposition of the land, the rent of which is payable to him; no one, therefore, can distrain upon him for non-payment of rent. There is no one to give him notice to quit, and he is not at liberty to retain possession of the land one minute after the death or mental recovery of the lunatic, or the determination of the committee by the crown. He is a mere bailiff, being a trustee at the pleasure of the crown during the continuance of the lunacy. A trustee cannot become tenant of land of which he is trustee: *Attorney-General v. Dixey* (a); *Attorney-General v. Lord Clarendon*. (b)

Manning, Serjeant, for the respondent. The cases referred to only decide that the Court of Chancery will set aside leases granted by a trustee to himself, when application is made to the Court for that purpose. They do not shew that the lease has not a legal effect while it is in existence. The respondent, in the ac-

(a) 13 *Ves.* 519.

(b) 17 *Ves.* 491.

counts returned to the Court of Chancery, enters himself amongst the other tenants of the estate at a certain rent, and these accounts were allowed by the Court; which allowance, it is submitted, is equivalent to a receipt by the Court of Chancery of so much rent from the respondent as tenant. It was certainly not received from him as owner; and if as bailiff, he would have accounted for the receipt of so much money simply, and not entered the amount as for rent due from him. Although as committee, the respondent might have no power to grant leases without the order of the Lord Chancellor, still if he occupied as tenant himself, with the sanction of the Court of Chancery, as in the present case it is submitted he was allowed to do, he became entitled to vote. Suppose a stranger had entered and accounted in the same way, it would either be as tenant or a disseisor, and he could hardly be allowed to say that he was only a disseisor. On the whole, it is submitted that the respondent occupied and paid rent as tenant, and was therefore entitled to vote.

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Humfrey replied.

Cur. adv. vult.

The judgment of the Court was now delivered by

WILDE, C. J. This was an appeal from the decision of the revising barrister, who had allowed the name of the respondent, *Herbert Langham*, to be placed on the list of voters for the county of *Northampton*. *Herbert Langham* claimed to vote in respect of a qualification as occupier of house and land. The vote was objected to on the ground that he did not occupy as tenant. The revising barrister decided that he did, and the appeal

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was against that decision. The property in respect of which the vote was claimed is part of the property of Sir *J. H. Langham*, a lunatic. By letters patent 21st *June*, 1 *Vict.* the custody of the person of the lunatic was granted to Dame *Elizabeth Langham*; and to *Herbert Langham*, the respondent, was given, committed, and granted "the custody, regulation, disposition, and receipt as well of all manors, messuages, lands, tenements, houses, farms, revenues, services, and hereditaments, &c., and all rents, revenues, and profits thereof, which the aforesaid Sir *J. H. Langham* hath or ought to have in possession or reversion, &c., as also the custody and government of all the goods and chattels, farms, stock of cattle, &c. to the said Sir *J. H. Langham* belonging; to hold the aforesaid custody, &c. as long as it shall please us, during the continuance of the lunacy of the said Sir *J. H. Langham*; Provided always, that the said *Herbert Langham* shall render a true account of the issues, revenues, and profits of the manors, messuages, lands, &c., and of the goods and chattels, &c. once in every year at the least, and as often as to the Lord Chancellor shall seem meet, and shall obey all order and orders of the Lord Chancellor, &c. made or hereafter to be made touching the premises." After this grant some of the tenants of Sir *J. H. Langham* quitted their farms, and *Herbert Langham* entered upon the occupation of them, to the extent of 200 acres, with a house; received the produce to his own use and benefit; and in his annual account passed before a Master in Chancery, in *July*, 1847, entered himself in the column of tenants, and in the column of rents due at *Lady-day*, 1846, inserted opposite his name the sum of 393*l.*, and in the column of receipts entered that sum as

received. The question for our decision is, whether the circumstances stated shew that *Herbert Langham* occupied the land as tenant so as to be entitled to a vote by the 2 *Will.* 4. c. 45. s. 20., and after some hesitation we have come to the conclusion that he did not occupy as tenant. The letters patent did not confer upon him any estate, but merely the custody of the land ; he did not therefore, by virtue of his appointment as committee, become tenant. No other act is shewn to have been done by any person either having an estate or power to create a tenancy by virtue of which he could become tenant. The only evidence relied on to prove a tenancy is the account rendered in the Court of Chancery, wherein he entered his own name as a tenant, and 393*l.*, as an annual rent due at *Lady-day*, 1846, and that sum as received by him. But he could not make himself tenant by his own act, nor could the Master in Chancery make him tenant, by allowing that account. The account might indeed preclude the committee from saying that he had not received profits to the amount entered, but it would not confer upon him an estate as tenant, or render him liable to distress, or to an action for rent. We think, therefore, that the decision of the revising barrister was wrong, and that the appeal must be allowed.

Decision reversed.

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BURTON
v.
LANGHAM.

1848.

CASES

ARGUED AND DETERMINED

IN THE

COURT OF COMMON PLEAS,

UNDER THE STAT. 6 VICT. c. 18.

IN

MICHAELMAS TERM,

IN THE

TWELFTH YEAR OF THE REIGN OF VICTORIA.

JOLLIFFE, Appellant, and RICE, Respondent.

November 13.

A coach-house and stable (together of the yearly value of 10*l.*, but separately of less value) adjoining one another, under the same roof, with no internal communication except two grated windows looking from one into the other, and with separate outer doors opening into the same court-yard, closed by gates, is a *building* within the meaning of stat. 2 *Will.* 4. c. 45. s. 27.

AT a court held before the barrister appointed to revise the list of voters for the borough of *Newport, Isle of Wight*, *Henry Rice* objected to the name of *Joseph Jolliffe* being retained on the list of voters for the parish of *Newport*. The name of the said *Joseph Jolliffe* stood thus on the list:

Joseph Jolliffe.	Bowcombe.	Coach-house and Stable.	Holyrood Street.
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The ground of objection was, that a stable of which the said *Joseph Jolliffe* was the occupier, could not be joined with a coach-house, of which he was also the occupier, so as to make one entire qualification within the meaning of the statute 2 *Will. 4. c. 45. s. 27.*, neither the coach-house without the stable, nor the stable without the coach-house, being of the clear yearly value of 10*l.*, but the said buildings together being of that value. In other respects the qualification of the said *Joseph Jolliffe* was unimpeached.

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JOLLIFFE
 v.
RICE.

The buildings in question adjoin one another, and are under the same roof, the stable standing at the back of the coach-house, and there being two grated windows looking from one into the other, but no internal communication by which a person could pass from one to the other. The door of the coach-house is under a covered gateway, leading from the street into a yard, which yard, with the premises in question, formerly belonged to an adjoining inn. The door of the stable is in the yard round the corner of the gateway, and a few yards distant from the entrance to the coach-house. There are wooden gates at the entrance of the said gateway from the street, which, when closed, would shut in both the coach-house and the stable in question. These gates and the said gateway and yard are used in common by the said *Joseph Jolliffe* and the occupiers of three different sets of premises, let separately, and situate respectively under the gateway and within the yard. In order to pass from the coach-house to the stable, or from the stable to the coach-house, a person must come out into the said common gateway and yard, and pass along them respectively, from the door of one building to the door of the other.

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 v.
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A large room which is over the gateway is over both the coach-house and stable in question, and also over another coach-house at the opposite side of the gateway, and to which room the entrance is from the street, and is occupied by a different tenant and separately rated. The dwelling-house of the said *Joseph Jolliffe* is between two and three miles distant from the building in question.

The revising barrister held that the building so situate could not be joined so as to constitute one entire qualification, and the name of the said *Joseph Jolliffe* was accordingly expunged. If the Court should be of opinion that the said decision was erroneous, the name of the said *Joseph Jolliffe* was to be restored to the said list of voters for the said borough of *Newport*.

Poulden, for the appellant. The coach-house and stable described in the case is a building within the meaning of the stat. 2 Will. 4. c. 45. s. 27. The revising barrister seems to have decided that these places did not constitute a building, on the ground that there is no internal communication between them. But internal communication is not necessary to make one entire building; it is enough if the premises be all under the same roof. One of the ingredients in the crime of burglary is that the premises broken into are contiguous to and under the same roof, or within the same curtilage, as the dwelling-house. To shew that internal communication is immaterial in cases of burglary, it is only necessary to refer to *Brown's Case* (a); *Rex v. Burrowes* (b); *Rex v. Chalking* (c); *Rex v. Lithgo* (d);

(a) 2 East, P. C. 501.

(b) 1 Moo. C. C. 274.

(c) Russ. & R. C. C. 334.

(d) Russ. & R. C. C. 357.

1 *Russell on Crimes*, p. 798. In *Rex v. Westwood* (a), it was held that a building separated from a dwelling-house by a public thoroughfare, could not be deemed to be part of the dwelling-house, inasmuch as it did not adjoin the dwelling-house, was not under the same roof, and had no common fence. It is found by the case that the buildings in question adjoin one another, and are under the same roof; and they both open into the same yard, which is closed by gates used in common by *Jolliffe* and the other three occupiers. It is submitted, therefore, that the decision of the revising barrister was erroneous.

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Creasy, for the respondent. It is unnecessary to dispute the effect of the cases on burglary which have been cited, as they are inapplicable. The principle on which they depend is the extension to outbuildings within the curtilage of the protection of the dwelling-house. If in this case there had been a dwelling-house and coach-house, or a dwelling-house and stable, there might have been something like a foundation for the argument offered on the part of the appellant, but upon the facts stated by the revising barrister, the supposed analogy utterly fails. It is a question of fact whether the coach-house and stable constitute a "building" or "buildings," and the revising barrister speaks of them as "buildings." The Court will not review his decision on a matter of fact. If, however, the Court should be of opinion that the point is open to argument, it is submitted that the coach-house and stable are separate buildings, each having its own outer door, and would, if of sufficient annual value, confer a vote on the occu-

(a) *Russ. & R. C. C.* 495.

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pier; *Wright v. The Town-Clerk of Stockport*. (a) It has been held in *Deakurst v. Fielden* (b), that a claimant cannot join together two separate buildings, in order to make up the value required by the 27th section of the Reform Act. [*Maule J.* In that case the two buildings were 300 yards apart from each other. In *Wright v. The Town-Clerk of Stockport* (a), we decided that rooms which were distinct or separate portions of a factory were buildings within the meaning of the Act; but there can be no doubt that if one man had occupied the whole factory, he would have been entitled to vote in respect of that occupation.] The appellant does not occupy the entire fabric, for there is a room over the coach-house and stable which is occupied by a different tenant. A settlement may be gained, under the stat. 6 Geo. 4. c. 57., by uniting two separate and distinct dwelling-houses, but not by holding part of a house; *Rex v. Wootton*. (c) [*Wilde C. J.* The case states that the stable stands at the back of the coach-house, and that there are two grated windows looking from one into the other. If there were a door where one of the windows is, would it be one building?] It might be so. [*Maule J.* If the two buildings were thrown into one by knocking down the wall between them, you would make a building, not by adding any thing, but by taking something away. Even as the case stands, the coachman may communicate with the groom, or the groom with the coachman, through the grated windows.] To make them one building, there must be internal means of communication by which people may pass and repass. [*Maule J.* There may be a good deal of communication without walking backwards and forwards.]

(a) *Ant2*, Vol. I. p. 33.(b) *Id.* p. 374.(c) 1 *A. & E.* 252.

Poulden, in reply, was stopped by the Court.

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JOLLIFFE
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WILDE C. J. I think there is no difficulty in this case. That the two places in question originally formed one building, is quite clear from the description of the premises set forth in the statement of facts drawn up by the revising barrister. They are in the same courtyard, with a room over both, and the circumstance of its being necessary, in order to get from the coach-house to the stable to go out into the yard, is no more than what happens in the case of every gentleman's coach-house and stable. There is an internal communication by means of two grated windows, and it seems to me that what the revising barrister has set forth shews that in point of law and in point of fact this coach-house and stable make one building. The Court has repudiated on former occasions the inferences drawn from settlement and burglary cases, which have been cited for the purpose of throwing some light upon the construction of the Reform Act; but the objects of the law in these cases are quite different from those contemplated by the statute under consideration. The sole question here is, whether the coach-house and stable constitute one building or two. By what test is that to be tried? Is it simply whether there is a door between them? because, unless that be the test proposed, no doubt can arise on the case. But these places have a common roof, and there is a communication between them by means of windows, and I do not think that the restraint put upon other means of communication at all affects the question of their constituting one building, such as would give a party a right to vote under the act of parliament. On the whole, I think

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and that his decision must be reversed.

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COLTMAN J. I am of the same opinion. The substance of the argument for the respondent, as I understand it, is that the stable and coach-house, if occupied by different persons, would give each of them a vote, supposing the value to be sufficient, but that, the value of either separately being insufficient, they cannot be joined to make one qualification. The cases, however, seem to shew just the reverse. In the case of the factory let out to several tenants, each might be said to occupy one building, which would give him a right to vote; but it is impossible to contend that if one person occupied the whole factory he would not have a right to vote in respect of that occupation. The burglary cases are not like the present, because some refinements were introduced into that branch of the law which we should not think ourselves justified in applying to the construction of the statute before the Court. So far, however, as they go, the decisions in those cases are in favour of the appellant, because they shew that, *in favorem vitæ*, all buildings under the same roof were deemed to be portions of the same dwelling-house.

MAULE J. I have sufficiently expressed my opinion during the argument.

WILLIAMS J. concurred.

Decision reversed.

Poulden applied for costs, but took nothing by the application.

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FOX, Appellant, and the Overseers of SHASTON
SAINT PETER, SHAFTESBURY, Respondents.

November 13.

UPON an appeal from the decision of the revising barrister for the borough of *Shaftesbury*, the following case was stated for the opinion of the court:—

Thomas Lodge objected to the name of *James Fox* being retained on the list of scot and lot voters for the parish of *Shaston St. Peter*, in the borough of *Shaftesbury*. Before and since the act of 2 Will. 4. c. 45., *Fox* had been a scot and lot voter for the parish of *Shaston St. Peter*, and had duly exercised his franchise. In *June*, 1848, but on what day did not appear (the heading being “this day of *June*”), a new rate was levied, the allowance of which is in the following terms:—

“The foregoing rate or assessment is allowed and confirmed by us, two of Her Majesty’s justices of the peace for the borough of *Shaftesbury*.

A. B. }
C. D. } Churchwardens.”

A. B. is a justice of the peace for the borough, and churchwarden of the parish of *Shaston St. Peter*, and *C. D.* is a churchwarden of the parish, *but not a justice of the peace for the borough*. The allowance and confirmation are not signed by any other parties. This rate has been variously received by the parish, some voters paying it and some not, but no attempt has been made to appeal against it either for its illegality or its irregularity. The barrister was of opinion that *Fox*

A scot and lot voter for a borough had not paid before the last day of *July* a poor-rate made in *June*, and unappealed against, but which had not been allowed by two justices. Held, that the rate was a nullity, and consequently that the voter was not disqualified by non-payment thereof.

1848. not having paid the rate thus imposed upon him, could not be said to have discharged all demands payable by him, and expunged his name.
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- Several other cases were consolidated with the above.

Otter, for the appellant. The appellant's name ought to be restored to the list, unless the facts stated on the face of the case shew him to be disqualified. The case does not state that the rate therein mentioned was a poor-rate, nor that it was a poor-rate for the parish of *Shaston St. Peter*, nor that the rate was demanded of the appellant. Neither does it appear that the rate was signed by a majority of the churchwardens, as required by stat. 6 & 7 *Will.* 4. c. 96. [*Maule J.* The point reserved for us is the sufficiency of the allowance, and therefore it was not necessary to state any particulars with respect to the making, or form, of the rate. A case from a revising barrister is not to be looked at like a special verdict, or a plea, which must be good *in omnibus*; but all that is required is that it should shew with reasonable certainty what is the point in dispute.] The rate is void unless the declaration at the foot of the rate be duly signed; *The Queen v Fordham (a)*. [*Maule J.* That has nothing to do with the allowance of the rate by the justices, which is the question here.] Then it is submitted that as the rate was allowed by only one justice of the peace, it is void, and non-payment of a void rate is no ground for disfranchisement. The stat. 43 *Eliz.* c. 2. s. 1. directs the churchwardens and overseers to make the rate, which must be allowed by two justices at least. By the stat. 17 *Geo.* 2. c. 3. s. 1.

(a) 11 *A. & E.* 73.

the rate is to be published on the *Sunday* next after the allowance, and no rate shall be esteemed sufficient, so as to collect the same, unless such publication has been made. The appellant claims as a scot and lot voter under the 33rd section of the Reform Act, and he is not to be disfranchised for non-payment of a poor-rate which is void in law; *The Queen v. The Mayor of New Windsor*. (a)

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No counsel appeared for the respondents.

WILDE C. J. In this case the appeal must be allowed. In point of law there has been no rate at all; consequently no non-payment of a rate, and therefore there can be no disfranchisement. It appears that by the stat. 2 Will. 4. c. 45. s. 33. the right of voting in certain boroughs as scot and lot voters is reserved to persons who enjoyed that right when the act passed, if duly registered, but that no such person is to be registered, unless he be qualified on the last day of *July* in such manner as would entitle him then to vote if such day were the day of election, and the act had not been passed. Now the case finds that the appellant is entitled to vote unless he be disqualified by non-payment of the *June* rate, and it therefore becomes necessary to refer to this document, which would have been considered as a rate if it had been properly authenticated and allowed by two justices. In *The Queen v. The Earl of Yarborough* (b), *Littledale J.* says that the reason why the magistrates are required to sign the rate is that, unless they do sign it, there can be no rate at all. As there is no appeal from their decision, if they

(a) 7 Q. B. Rep. 908.

(b) 12 A. & E. 420.

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refuse to allow the rate, the parish would be placed in the situation of not being able to make one, and therefore the Court would compel them by mandamus to allow the rate as ministerial officers. But although that allowance be a merely ministerial act on their part, still it is an act of considerable importance; it must precede the publication of the rate, which gives notice to those who are called on to pay that a rate has been made, so that they may appeal against it at the sessions if they think there is any well-founded objection to it. The stat. 17 Geo. 2. c. 3. s. 1. enacts that no rate shall be reputed sufficient so as to collect the same, unless public notice of the allowance thereof be given on the *Sunday* next after such allowance; and in *Sibbald v. Roderick* (a), rates which had not been so published were held to be altogether nullities, and a distress to recover the amount was declared to be consequently illegal. (b) Looking at the effect of these decisions, it is clear that a party is under no legal obligation to pay a rate which is not published on the *Sunday* after it has been allowed by two justices. In the present case there has been no such allowance, and that which has been called a rate is no rate at all, in the sense of creating an obligation to pay it. There was, therefore, no reason why the appellant should not have voted on the last day of *July*, and he was consequently entitled to be registered. There is a broad distinction between an irregular rate, which may be quashed on appeal, and a rate which is no rate at all in law, and altogether void.

COLTMAN J. I am of the same opinion.

(a) 11 A. & E. 38.

(b) *Acc. Rex v. Newcomb*, 4 T. R. 368.

MAULE J. The poor-rate under the statute of *Elizabeth* is a public tax imposed on the parishioners by the churchwardens and overseers, with the consent of the justices; but it must be published, and until this publication has taken place, no one can be assessed for what he is to pay. The justices of the peace are said to act ministerially only in allowing the rate, which is correct in this sense, that they have no power of judging of the intrinsic goodness or badness of a rate, and are bound to confirm the rate which is presented to them; but I think that the justices may act judicially when a rate is brought for allowance, so far as to judge whether the churchwardens and overseers who offer the rate are the proper officers to make it. That view seems to have been taken by the Court of Queen's Bench in *Rex v. Folly*.^(a) "On a mandamus to the justices of *Wotton Bassett* to allow a rate, they returned, that ever since the 43 *Eliz. c. 2.*, the justices had appointed four, three, or two overseers within that part of the premises which lies within the *borough*, and that they had always made rates within their jurisdiction; then they say that the rate was offered to them made by overseers appointed by the justices of the *county*, and not of the *borough*. *Per Curiam*—The return must be confirmed." In that case, therefore, they determined whether the rate was made by the proper officers, and I apprehend that they are exclusively the judges of that. A rate not properly made and authenticated is no more than a piece of paper issued by private individuals, professing to tax persons without the authority of a statute. I think the appellant has

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(a) 1 *Bott. P. L.* p. 78.

1848. not been guilty of any default as a scot and lot voter in not paying that which somebody calls a rate, but which the facts of the case shew was no rate at all.

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WILLIAMS J. If it were necessary to appeal in order to quash this rate, I think the appellant would have been disqualified by non-payment. It appears, however, from *Sibbald v. Roderick* (a) that the rate is a nullity, and therefore it seems to me that the revising barrister was wrong.

Decision reversed.

(a) 11 A. & E. 38.

November 13. COPLAND, Appellant, and BARTLETT, Respondent.

A mortgagor in actual possession of a freehold estate of inheritance has no right to vote for a county, under stat. 6 Vict. c. 18, s. 74., unless the premises be of the annual value of 40 shillings, above all charges, including interest on the mortgage.

Monthly payments by a member of a building society, established under

stat. 6 & 7 Will. 4. c. 32., in discharge of the sums monthly accruing due on his shares, and for the payment of which the freehold premises of the member are mortgaged as a security, are a charge on the freehold, within the stat. 8 Hen. 6, c. 7.

THIS was a consolidated appeal from the decision of the revising barrister for the southern division of the county of *Essex*, who stated the following case:—

At a court, held for the revision of the lists of voters for the parish of *Springfield*, *Robert Bartlett* objected to the name of *George Brooks* being retained upon the list of voters in respect of property situate within the said parish. The voter, *George Brooks*, is a member of the society called the *Chelmsford and Essex Building and Investment Society*, established under the provisions of the act 6 & 7 Will. 4. c. 32., in which he held one share and a half. Each share obliges the shareholder to the payment of 10s. per calendar month.

More than six months previous to the 31st *July* 1848, the voter became the purchaser in fee simple of a cottage and garden, value 8*l.* per annum, formerly part of *Sion Field*, in the parish of *Springfield*, and he resides in the said parish. The society advanced the purchase-money, 65*l.*, and the voter mortgaged the said cottage and garden to the society, to secure the payment becoming due upon his shares, namely 15*s.* per month, during the existence of the society, and by virtue of the said mortgage the society are entitled, upon failure of payment by the voter for three successive months of the amount due upon his shares, to enter upon and retain possession of the premises till the arrears are paid, but until such default the voter is to enjoy the property. The voter has never been a defaulter in making his payments. The voter is entitled to redeem the said premises from the said mortgage, by payment of the whole sum which the monthly payments upon his shares will amount to, up to the time when the society shall be dissolved, without any other payment of principal; but nothing is stated as to the period during which the society is to exist. The funds of the society arise out of the monthly payments of the members, and the funds are held for the benefit of the members in proportion to the number of their shares. The present value of each share is 37*l.* 15*s.* 9*d.* But there is no proof what is the whole amount of the funds of the society, or how much of the funds is invested in mortgages of the property of the members, or how the rest of the funds are invested, or what is the number of shares, or the number of the members of the society.

On the part of the respondent it was contended, that

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the arrangement between the voter and the building society is in substance and effect a mortgage, whereby the amount advanced and the interest were secured and made payable by monthly instalments. On the part of the appellant it was contended, that, inasmuch as the payments on the shares constituting the funds of the society are held for the benefit of the members, the annual value of the voter's property is not diminished by the payments with which it was charged. It was also contended, that no interest was payable on the loan, and the society had no claim on the rents until the voter had made three successive defaults in his payments, and that there was, therefore, no disqualifying charge. The barrister was of opinion that the annual value of the voter's property, viz., 8*l.* per annum, was reduced by the charge of 15*s.* per month below the amount of 40*s.* per annum, and he erased his name from the list of voters. If the Court should be of opinion that the voter had a freehold interest in the cottage and land, amounting to 40*s.* per annum, his name was to be restored, otherwise it was to remain erased from the list.

Byles, Serjt., for the appellant. The claimant is a mortgagor in actual possession of the tenements, and in receipt of the rents and profits thereof, and as such he is entitled to vote under the stat. 6 *Vict. c.* 18. s. 74., notwithstanding the mortgage. The Benefit Building Societies Act, 6 & 7 *Will. 4. c.* 32. s. 3. enacts "that any such society may by the rules thereof describe the forms of conveyance, mortgage, transfer, agreement, bond, or other instrument, which may be necessary for carrying the purposes of the said society into execution."

The case does not set out the rules of this society, but it appears that the claimant is obliged to pay 15 shillings per month in respect of a share and a half. The mortgagees have no right to enter and take the profits until there has been a default in payment for three months; and no default has been made here. It is clear, therefore, in the first place, that nobody but the mortgagor in possession can vote in respect of this estate. [*Wilde C. J.* You must first shew that the estate is of the value of 40 shillings a year.] The stat. 8 *Hen.* 6. c. 7. requires as the qualification of county electors that they shall have "free land or tenement to the value of 40 shillings by the year, at the least, *above all charges*;" and it is submitted that a mortgage-deed was not contemplated when the legislature spoke of "charges" on land. [*Maule J.* As I understand the case, the claimant has an estate in fee-simple defeasible on a condition subsequent; and you say that a base fee confers a right to vote under the statute of *Henry 6.*] That is the view submitted to the Court. [*Wilde C. J.* Suppose a mortgage were executed, not conveying the legal estate, but merely charging the land as security for the payment of a sum of money; the mortgagor continues in possession, and if, after payment of the interest, the profits of the land do not amount to 40 shillings, he cannot be entitled to vote.] Until the mortgage money becomes due there is no charge on the estate, and even, therefore, if this were a common mortgage, which is putting the case most unfavorably for the claimant, he would have a right to vote, as the revising barrister has found that the principal has not become due. But, secondly, it is submitted that this is not a mortgage. The deed imposes on the land a future contingent periodical charge in the

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nature of a rent-charge. The revising barrister has not shewn how long the society is to last, and it might be dissolved to-morrow. Lastly, the appellant is himself a member of the society, who are the mortgagees, and he is therefore interested both as mortgagee and mortgagor. The amount of his interest as mortgagee is not stated, but his share and a half is worth 56*l.* 1*s.* 7½*d.*, which at 5 per cent. gives more than 40 shillings per annum.

Badeley, for the respondent. The charge here created is said not to be a mortgage, but the revising barrister finds it to be a mortgage, and that is sufficient. The facts stated in the case shew that it is an ordinary mortgage with monthly payments of interest, after default in payment of which for three months the mortgagees may enter. The act under which these building societies are constituted, stat. 6 & 7 *Will.* 4. c. 32. s. 1., contemplates securities in the usual form of a mortgage, and if this deed be not a mortgage, the society has been acting in contravention of the act itself, which is not to be presumed. Moreover, the 5th section provides that, after principal and interest have been paid, an indorsement to that effect on the mortgage deed by the trustees of the society shall operate as a reconveyance. It is contended, further, on the other side, that this is a future contingent charge; but it is submitted that it is a present operating charge of 15 shillings a month, or 9*l.* a year, upon property which appears to be worth 8*l.* a year only. In *Mosley v. Baker* (a), a conveyance under the act 6 & 7 *Will.* 4. c. 32., was treated by *Wigram V.C.* as a common mortgage. The stat. 6 *Vict.* c. 18. s. 74.,

(a) 17 *Law Journ. Rep.* (N. S.) *Chanc.* 257.

has made no alteration in the law. The stat. 7 & 8 Will. 3. c. 25. s. 7., which provides in what way mortgagors and mortgagees may vote, is precisely the same in effect as the statute of *Victoria*. [*Williams J.* The stat. 2 Will. 4. c. 45. s. 23. is a re-enactment of stat. 7 & 8 Will. 3. c. 25. s. 7., and the stat. 6 Vict. c. 18. s. 74. is an explanation of the clause in the Reform Act.] That being so, a mortgagor in possession must still have an income of the value of 40 shillings per annum from his land, before he has a right to vote. [*Wilde C. J.* The case states that the voter is entitled to redeem the premises, by payment of the whole sum which the monthly payments upon his shares will amount to. It does not say what the whole sum is, but the land is redeemable.] Whatever may be the value of the premises hereafter, there is a charge upon them now, which reduces their annual value below 40 shillings, and that being so, the appellant is disqualified. In the *Bedfordshire Case (a)*, the Committee came to a resolution "that the interest of a mortgage (which is charged upon the estate, in right of which a voter voted), being established by evidence, so as to reduce the value of the estate to less than 40 shillings per annum, does invalidate the vote." In *Rogers on Elections (b)*, it is said "This may fairly be taken to be the principle upon which cases of this nature are now decided: for the *Middlesex* Committee, upon the vote of *John Beaumont*, resolved, 'that a mortgage on a freehold shall be considered to invalidate the vote, if the interest paid by the voter reduces the value of such freehold below 40 shillings per annum.'" The

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(a) 2 Lud. 469.

(b) 3rd ed. 139.

1848. *Middlesex Case (a)*, here referred to, was decided upon the stat. 28 *Geo. 3. c. 36. s. 6. (b)*, which enacted, that at a county election the voter must make a declaration "that he really and truly has an estate of the clear yearly value of 40 shillings over and above the interest of any money secured by mortgage upon the said estate, and also over and above all rents and outgoings payable out of or in respect of the said estate, other than parliamentary, public, or parochial taxes, and that he is in the actual possession of the rents or profits of the said estate for his own use." [*Maule J.* Was the stat. 7 & 8 *Will. 3. c. 25.* cited to the Committee in that case?] It was. [*Wilde C. J.* Is there any reported case in which this question was distinctly raised?] In *Wetherell v. Hall (c)*, which involved the sufficiency of a qualification for killing game, it appeared that, after deducting the interest reserved on a mortgage, the defendant had not 100*l.* per annum to his own use. Judgment was given against the defendant on this point, and *Buller J.* said the only question was, whether "clear of all charges" meant clear value to the person in possession; and he expressed himself strongly in the affirmative. It is said that the mortgagor is a member of the society to whom the premises are mortgaged; but the case does not state that he is ever to receive any thing from the society; he is only a member for the purpose of paying.

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Byles, Serjt., replied.

(a) 2 *Peck.* 103.

(b) Repealed by stat. 29 *Geo. 3. c. 18.*

(c) *Heywood on County Elections*, p. 145., *S. C. Cald.* 290.

WILDE C. J. It seems to me that the revising barrister has come to a right conclusion upon the facts found in the case. Our attention has been directed to circumstances which may hereafter arise to affect the position of the appellant, but they are not material to a proper determination of the point under review. The question is, whether the claimant was entitled to a vote when he presented himself before the revising barrister, and to make out that right it was necessary for him to shew that he had been in possession of a freehold of 40 shillings annual value for six calendar months previous to the last day of *July*, 1848. Now, during that period he had paid 15 shillings a month in respect of what is called a mortgage on his property, thereby reducing the annual value below 40 shillings. It is said that this is not an ordinary mortgage. No doubt there may be different descriptions of mortgages, but when in an act of parliament the legislature uses the term "mortgage," which is popularly applied to a security of a particular character, I think the term must be taken to have been employed in its popular sense. It appears also, from *Mosley v. Baker* (a), that the Court of Chancery treated a security of this nature, made under the authority of the same act of Parliament, 6 & 7 Will. 4. c. 32., as an ordinary mortgage, and decreed that a party wishing to redeem must first have an account taken in the usual way. The question then arises, is interest on a mortgage a "charge" on an estate, within the meaning of the stat. 8 Hen. 6. c. 7.? It appears for a very considerable period to have been so understood. The object of that statute

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was to ascertain that the person intrusted with the right of voting held a certain position in society, and it was supposed that the best guarantee for that was the possession of a clear pecuniary interest of a certain amount arising from a certain estate in land. If the owner of an estate receives 20 shillings with one hand, and pays 30 shillings with the other, what has he left? The stat. 28 *Geo. 3. c. 36.* did not profess to alter the existing law, but to carry it into effect, and with that object in view it required that the voter at a county election should make a declaration, which contains a definition of the word "charges" in the stat. 8 *Hen. 6. c. 7.* It made him declare that he had an estate of the clear yearly value of 40 shillings, over and above the interest of any money secured by mortgage on the estate. After that it must be considered that the legislature was perfectly well aware of the amount of pecuniary interest necessary to constitute a qualification. Before the passing of the Reform Act a freeholder had no right to vote for the county unless he possessed an estate of 40 shillings a year beyond all charges, and the statute of *Geo. 3.* shews what those charges are. The Reform Act has made no alteration in this respect. But then it is said that the stat. 6 *Vict. c. 18. s. 74.* empowers, in terms, the mortgagor in possession to vote, notwithstanding the mortgage. The act, however, did not intend to give the mortgagor a different interest in his estate from that which he really had, but merely to guard against any technical difficulty about the quality of his estate. The quantity of his interest remains as before. Looking at the spirit of the law, which requires that a party entitled to vote as a freeholder shall have an interest in his estate to the amount of 40 shillings

annually, I think that the claimant, having executed a mortgage security which reduces his interest below that amount — being, indeed, an annual charge exceeding the annual value of his estate — was not qualified to be placed on the register. The decision, therefore, must be affirmed.

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COLTMAN J. I am of the same opinion. It was not intended by the statute of *Victoria* to alter the quantum of value necessary to confer on the freeholder a right to vote.

MAULE J. The stat. 2 *Will.* 4. c. 45. s. 23. and stat. 6 *Vict.* c. 18. s. 74., which say that a mortgagor in possession shall vote, and not the mortgagee, merely do so for the purpose of determining, when two persons have an estate in the same land — the one equitable, the other legal — which of these two shall vote in respect of it. They do not touch the question of value at all. The pecuniary interest of a freehold voter must be by stat. 8 *Hen.* 6. c. 7. 40 shillings by the year above all “charges;” and the meaning of the word “charges” is explained by the declaration which a voter was required to make by stat. 28 *Geo.* 3. c. 36. s. 6. It is said that the amount of the appellant’s interest as mortgagee is not stated in the case, and if this were material, the case might be sent back to be re-stated; but my brother *Byles*, knowing how matters stand, prudently declines such a reference to the revising barrister. I think, therefore, that the payment of 9% a year by the claimant in respect of the mortgage must be deducted from the annual value of his freehold, and consequently the decision of the revising barrister was right.

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WILLIAMS J. I am of the same opinion. I have some difficulty in discovering on what ground the stat. 28 *Geo. 3. c. 36.* included interest on a mortgage among the "charges" intended by the statute of *Hen. 6.*; but as the legislature has declared that this is a charge within the meaning of that statute, it is clear that we must hold the sum paid by the claimant to the building society to be a charge on his estate, which reduces it below the annual value of 40 shillings.

Decision affirmed.

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A freeman who has been excused from the payment of the poor-rate, on account of poverty, under the stat. 54 *G. 3. c. 170. s. 11.* is not thereby disqualified as having received parochial relief or alms, within the meaning of the 36th section of the Reform Act.

AT a court held before the revising barrister for the borough of *Lancaster*, *Thomas Bulfield* was duly objected to, as not being entitled to have his name retained on the list of freemen entitled to vote in the election of members of parliament for the borough. The barrister retained his name upon the list, subject to the opinion of the Court of Common Pleas upon a case, from which it appeared that *Bulfield* was the occupier of a house situate within the borough, and was duly rated to the poor in respect thereof, by a rate made in *September 1847*, in the sum of 12s. This rate was never paid, and on the 21st of *March 1848*, *Bulfield*, by consent of the overseers, was duly excused by two justices from the payment of the rate, on account of his poverty. It was argued that *Bulfield* was not entitled to be registered, because he had, within the meaning of the 2 *Will. 4. c. 45. s. 36.*, within

twelve calendar months next previous to the 31st of July 1848, received parochial relief or other alms, which by the law of parliament disqualified him from voting. And the question reserved for the court was, whether or not this was a good objection.

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A number of cases in which the same question arose were consolidated with *Bulfield's*.

Byles, Serjt., for the appellant. The question is, whether the release of a party from the payment of rates, under the provisions of the stat. 54 Geo. 3. c. 170. s. 11., amounts to the receipt of parochial relief, within the meaning of the 36th section of the Reform Act. It is submitted that when a person is rated to the relief of the poor he becomes indebted to the parish in the amount of the rate, and the excuse from payment, on account of poverty, operates as a release of the debt. To that extent, therefore, he receives relief from the parish, for the voter in this case was just in the same position when he was excused from the payment of 12 shillings, as if he had paid the money to the parish officers, and had received it back again from them. It is true that no action will lie to recover a poor's-rate, because the stat. 43 Eliz. c. 2. s. 11. provides another and a more speedy remedy; but the liability to pay rates does not the less constitute a debt. In *Stevens v. Evans* (a), a question was raised whether, after the death of a person rated, goods in the hands of an administrator were liable for the rate. The point was not decided by the judgment of the Court, which proceeded upon other grounds, but *Wilmot J.* said (b),

(a) 2 Burr. 1152.

(b) Id. 1157.

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"I have not the least doubt but that the representative ought to have been convened before the justices, and asked, 'What' he had to say why he should not pay the rate assessed upon *Vesey*, his intestate?' * * * Though it may be a charge upon the person (as has been objected), yet it is a charge upon him in respect of the thing occupied; and though he be called an offender, if he refuse to pay it, yet he can be no otherwise considered as an offender, than every other *debtor* who refuses or neglects to pay his *debts*." Being excused from the payment of rates is therefore within the spirit of the stat. 2 Will. 4. c. 45. s. 36. It is laid down in *Rogers on Elections* (a) that the receipt of alms is only evidence of inability, and may be rebutted by circumstances, and that the franchise is considered as suspended, but not annihilated. It is only necessary to contend on the part of the appellant that the franchise is suspended *pro hac vice*. There are no authorities directly in point, but the nearest are those in which the parish apothecary has attended the voter, or a member of his family, at the request of the voter himself; *The Colchester Case*. (b) According to the law of Parliament at the time of the passing of the Reform Act, such persons would have been disqualified from voting, and the 36th section of the act expressly refers to the law of Parliament concerning such matters, and provides that it shall still continue in force. It is submitted, therefore, that the decision of the revising barrister was wrong.

Kinglake, Serjt., for the respondent. Although the disqualification by receipt of parochial relief is as old

(a) 3rd ed. p. 95.

(b) 1 Peck. 508.

as the franchise itself, no attempt has been made before to-day to include within it a case like the present. The argument for the appellant is, that inability to contribute towards the parochial funds is equivalent to the receipt of relief from them. It will not be contended, however, on the other side, that a freeman, rated to the relief of the poor, would be disqualified by reason of his non-payment of the rate, as would be the case with a 10*l.* occupier under the 27th section of the Reform Act. Rating, and payment of rates, constitute no part of a freeman's qualification. He would not, therefore, have been disqualified by mere non-payment before the passing of the statute 54. *Geo. 3. c. 170.* But, since that act passed, a freeman is placed in a still better situation, since the 11th section empowers two justices of the peace, on the application of any person rated, and proof of his inability to pay the rate, with the consent of the parish officers, to order him to be excused, and to strike out his name from the rate. A party so excused is therefore in the same position as if he had not been rated at all. In the *Colchester case (a)* it was expressly decided that a rated person excused from the payment of rates on his own application was not disqualified as having received parochial relief. [*Maule J.* I have no doubt that, as far as the words of the 36th section of the Reform Act go, a party no more receives parochial relief because he does not pay the rate, than I receive relief from a beggar because I do not give him money when he asks for alms.] If the voter had appealed to the court of Quarter Sessions, and his name had in

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(a) 1 *Peck. 507.*

1848. consequence been struck out of the rate, he would, in a certain sense, have received relief, but that is not the parochial relief contemplated by the stat. 2 *Will.* 4. c. 45. s. 36.

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Byles, Serjt., in reply. It is not contended that a freeman would have been disqualified, before the passing of the stat. 54 *Geo.* 3. c. 170., by the mere non-payment of the rate, because the debt to the parish would have continued; whereas now the excuse operates as a release of the debt. [*Maule* J. Does the party excused thereby make out a case of pauperism?] He alleges his inability, through poverty, to pay the rate. [*Maule* J. That may be; and yet he might be unable to shew that he is entitled to receive relief from the parish, as a poor, lame, impotent, old, or blind person, not able to work, within the stat. 43 *Eliz.* c. 2. s. 1. For any thing that appears, he might be a person to whom the parish officers might be bound to refuse relief.] It has been contended on the part of the respondent that the party, when excused, is placed in the same position as if he had never been rated; but that is not so, for a distress warrant might have legally issued against him before the excuse, and the subsequent excuse would not make the warrant illegal.

COLTMAN J. (a) It appears to me that *primâ facie* the claimant is entitled to his vote, unless something be shewn from the facts of the case which amount to a disqualification. The burden of proving the disability, therefore, lies on the party objecting to the vote. It is

(a) *Wilde* C. J. was absent.

contended that the claimant was disqualified by reason of his having received parochial relief or alms. The words of the act are not to be strained against the franchise beyond the necessity of the case, and it appears to me that there is a very substantial difference between receiving relief from other persons, and giving them the means of relieving others.

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MAULE J. I suggested the reason for my opinion in the course of the argument, in order that it might receive an answer, and I am sure that if any answer to it could have been given, I should have received it from my brother *Byles*.

WILLIAMS J. I am of opinion that there is a clear difference between giving and receiving relief.

Decision affirmed, with costs.

POINTS, Appellant, and ATTWOOD, Respondent. *November 17.*

THIS was an appeal from the decision of the revising barrister for the borough of *Harwich*, by whom the following case was stated : —

At the Court of revision, held on the 28th *September* 1848, *William Points* objected to the name of *John Attwood* being retained upon the list of persons entitled to vote in the election of members for the borough of

An assistant overseer appointed in general terms under stat. 59 G. 3. c. 12., is an overseer whose duty it is to make out the list of persons entitled to vote, pursuant to stat. 6 Vict. c. 18. s. 13. ; and service of

a notice of objection upon him is sufficient, although he has not actually interfered in making out the list.

Service of a notice of objection upon the overseers is not invalidated by the bare fact of leaving the notice at an overseer's place of abode at 20 minutes past 11 at night on the 25th of *August*.

1848. *Harwich*, in respect of property occupied within the parish of *Dovercourt*. The notice of objection required to be given to the party objected to was duly given to *John Attwood*. The question in this case was, whether the notice of objection required to be given to the overseers of the parish who shall have made out the list in which the name of the person objected to shall have been inserted, was duly given (6 & 7 *Vict. c. 18. ss. 17. & 101.*). *Richard Meadows* and *John Sparrow* were the regularly appointed overseers of the poor for the parish of *Dovercourt*, for the year 1848. About two years ago, *George Cooper* was appointed by the parishioners assistant overseer, and has since continued to act in that capacity, assisting, acting for, and in fact discharging all the ordinary duties of the overseers. *Cooper's* appointment has not been confirmed or sanctioned by the Poor Law Commissioners. *Meadows* and *Sparrow* together made out and signed the list of voters, and the list of persons objected to respectively, as the overseers of the parish. *Cooper* took no part in making out, and did not sign either of the lists. The notice of objection required to be given to the overseers of the parish who shall have made out the list in which the name of the person objected to is inserted, was left at the place of abode of *George Cooper*, at twenty minutes past eleven o'clock at night, on the 25th day of *August*. The overseers inserted the name of *J. Attwood* in the list of persons objected to.

On behalf of *J. Attwood* it was objected, that notice of the objection had not been duly given to the overseers. For the objector it was contended, that *Cooper*, by his appointment as assistant overseer and discharge of the duties of the overseer, was an overseer of the

parish for the purpose in question, by virtue of the 101st section of the act 6 & 7 *Vict. c. 18.*; and that the notice might be given to an overseer, or any person whose duty it might be as overseer to act upon the notice, and that in fact it was adopted and acted upon by the insertion of *Attwood's* name by the overseers in the list of persons objected to. The barrister decided that, in this case, notice of the objection had not been duly given to the overseers; and, consequently, the name of *J. Attwood* was retained in the list of voters.

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An appeal from *Thomas Fuller* was consolidated with the principal case.

Kinglake, Serjt., for the appellant. (*November 13th.*) Due notice of objection was given to the overseers. The 17th section of the stat. 6 *Vict. c. 18.* enacts that every person objecting shall, on or before the 25th of *August*, give or cause to be given a notice of objection to the overseers who shall have made out the list in which the name of the person objected to shall have been inserted. It is admitted by the case that *Cooper*, upon whom the notice was served, did not make out or sign the list, but the 101st section of the same act provides that the word "overseers" shall extend to and mean all persons who by virtue of any office or appointment shall execute the duties of overseers of the poor, by whatever name or title such persons may be called, and in whatsoever manner they may be appointed. This description is sufficiently large to include an assistant overseer. No distinction is made by the 101st section between a churchwarden and an assistant overseer; and it has been already decided in

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Beenlen v. Hockin (a), that service of a similar notice upon a churchwarden who had not signed the list was a good service upon all the overseers. [*Maule* J. The 17th section does not require that the notice shall be delivered to the overseers who have *signed*, but to those who have *made out* the list.] In the case just referred to, *Wilde* C. J. says (b), "It seems to me that 'the overseers who made out the list' are the overseers of the particular parish or township to which the notice so sent may relate, and that these words do not mean the particular overseers by whose aid, or by whose interposition the list may have been framed." The stat. 59 G. 3. c. 12. s. 7. empowers the inhabitants of a parish in vestry assembled to nominate any person to be an assistant overseer of the parish; and authorizes two justices of the peace to appoint the person so nominated to be such overseer, who is thereby empowered to execute all such of the duties of the office of overseer of the poor as shall in the warrant for his appointment be expressed, in like manner and as fully to all intents and purposes, as the same may be executed by any ordinary overseer of the poor. The case finds that *Cooper* was appointed assistant overseer two years ago, and that he has since continued to discharge all the ordinary duties of the overseers of the parish. It does not appear that the warrant of appointment specifies any particular duties; it is, therefore, a general appointment, and his duties are in all respects, the same as those of an ordinary overseer; *Skingley v. Surridge*. (c)

(a) *Antè*, Vol. I. p. 526.(b) *Id.* p. 534.(c) 11 *M. & W.* 503.

Byles Serjt. for the respondent. The notice of objection was served on the wrong person, and in an improper manner. First, with regard to the person on whom the notice was served, the 17th section of the Registration Act requires that it shall be given to the overseers who have made out the list. *Beenlen v. Hockin* (a) is no authority for the appellant, as it did not appear in that case that the churchwarden upon whom the notice of objection was served did not assist in making out the list, though he neglected to sign it. Here, however, the case expressly states that *Cooper* did not make out the list. The interpretation clause (s. 101) of the act does not apply. The section provides that the word *overseers* shall extend to all persons who by virtue of any appointment shall execute the duties of overseers, which must mean by virtue of any legal appointment. But by the stat. 59 G. 3. c. 12. s. 7. the *nomination* only of the assistant overseer is vested in the parishioners; he can only be *appointed* by two justices of the peace, and the case finds that he was appointed by the parishioners, which was no appointment at all. Again, as the alleged appointment is stated to have been made about two years ago, it must have been subsequently to the passing of the act 7 & 8 Vict. c. 101., the 61st section of which enacts that every assistant overseer hereafter to be appointed, in pursuance of the 59 G. 3. c. 12. shall be subject to the orders of the Poor Law Commissioners, and the said Commissioners shall have the same powers with respect to all assistant overseers as are given to them by the 2 & 3 Vict. c. 84. s. 2. and 4 & 5 Will. 4. c. 76. s. 46. with respect to paid

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officers. It is provided by the last-mentioned statute that paid officers are to be elected under, and their duties defined by, an order under the hands and seals of the Poor Law Commissioners. There has been no such order or confirmation in the present case. *Cooper*, therefore, was not appointed an assistant overseer within the meaning of the stat. 59 *Geo. 3. c. 12.* and stat. 7 & 8 *Vict. c. 101.*, and consequently he is not an overseer in the sense contemplated by the stat. 6 *Vict. c. 18. s. 101.* Secondly, the service was insufficient on account of the lateness of the hour at which the notice was left at *Cooper's* place of abode. The revising barrister has decided that that notice of objection was not duly given to the overseers, and it was held in *Watson v. Pitt (a)*, that the sufficiency of the service of a notice of objection is a question of fact for the revising barrister, with whose decision the Court will not interfere. *Maule J.* said in that case *(b)*, "I think that the sufficiency of the service was a question of fact, and that we have no right to review the barrister's decision upon it." [*Maule J.* I think it may be fairly presumed from the statement in this case that the door was opened, and that the notice was left with somebody in *Cooper's* house. It is not to be understood, as a general proposition, that questions of fact are, in all cases, questions of fact for the decision of the revising barrister. A notice might be delivered, at 12 o'clock at night, to the wife of the party for whom it was intended, and that would be enough. On the other hand, a letter may be put inside a door in such a manner that there is no reasonable probability of its

(a) *Ante*, p. 73.(b) *P.* 78.

reaching, in due course, the party to whom it is addressed. It might be put under the door-mat.]

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Kinglake Serjt. replied. The second point mooted by the respondent was not raised before the revising barrister, and was not intended to be argued before the Court. The case finds, following the words of the 101st section of the Registration Act, that the notice of objection was left at *Cooper's* place of abode, and the time of the service is immaterial.

Cur. adv. vult.

The judgment of the Court was now delivered by

COLTMAN J. In this appeal, which was heard before my brothers *Maule*, *Williams*, and myself, in the absence of the Chief Justice, the question was, whether a notice of objection to the name of one *John Attwood* being retained on the list of voters for the borough of *Harwich*, had been duly served pursuant to the statute 6 *Vict. c. 18. s. 17*. The notice had been left at the place of abode of *George Cooper*, at twenty minutes past 11 o'clock at night on the 25th of *August*. The case stated for our opinion finds that *George Cooper* had been appointed by the parishioners assistant overseer about two years before, and had ever since continued to act in that capacity, discharging all the ordinary duties of the overseers. The case further finds that *Cooper's* appointment had not been confirmed or sanctioned by the Poor Law Commissioners. It does not, however, appear to us to be essential to the validity of an appointment of an assistant overseer, under the 59 *G. 3. c. 12. s. 7.*, that such appointment should be

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confirmed by the Poor Law Commissioners. That statute has not been repealed; and appointments may still be made under it, except in parishes from which the power is taken away or restrained by some order of the Commissioners; and the making of such appointment is expressly recognized in the statute 7 & 8 *Vict. c. 101. s. 61*. We think, therefore, that on the facts stated in this case, it must be understood that *George Cooper* had been appointed pursuant to the statute 59 *G. 3. c. 12.*; and, as there is no limitation of the duties which he is to perform, but the appointment is general in its terms, he must be taken to have been appointed to perform all the duties of an overseer: for which the case of *Skingley v. Surridge* (a) is an authority. Now, such an officer, as was stated by Lord *Denman*, in delivering the judgment of the Court in the *Queen v. Watts* (b), "is not the servant of the churchwardens and overseers, but of the vestry, from whom he directly receives his authority." The acts done by him are not, therefore, to be considered as done by him as the agent of the other overseers, but as done by virtue of his own authority derived from the appointment of the vestry. By the 13th section of the 6 *Vict. c. 18.*, the overseers of every parish are required to make out a schedule of persons entitled to vote, and they are to sign the list and publish copies; and the question arises, who are the persons meant by the word "overseers" in that section? Now, by the interpretation clause, section 101, of the 6 *Vict. c. 18.*, the word "overseers" shall extend to and mean "all persons, who by virtue of any office or appointment shall execute the

(a) 11 *M. & W.* 503.(b) 7 *A. & E.* 461.

duties of overseers of the poor." An assistant overseer, therefore, if appointed to perform all the duties of an overseer, is one of the persons who are to perform the duty of making out the list of voters ; and in this case it was, we think, within the line of *Cooper's* duty to make out the list. It was held by this Court, in the case of *Beenlen v. Hocken(a)*, that it was sufficient to serve the notice of objection under the 17th section on any one of the overseers, whose duty it was to make out the list, although the overseer had not signed the list. We think, therefore, that as *Cooper* was one of the parties, directed by the act to make out the list, the fact of his not having actually interfered in making it out is immaterial. The list, when made out, must be considered as having been made out by all those directed by the act to make it ; and a service on any one of them is a service on a proper party. It was not insisted before us, that the lateness of the hour at which the service was made, affected its validity, supposing there was no other objection to it ; nor do we consider that any valid objection to the service could be raised on that ground, for the act, in section 101, has pointed out what shall be deemed a good service, viz. "that it shall be sufficient if the notice has been left at the place of abode of any of the overseers," so that, if the person served answered, as we hold he does, the description of the overseer, the service is such as the statute requires.

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Decision reversed.

(a) *Antè*, Vol. I. p. 526.

CASES

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ARGUED AND DETERMINED

IN THE

COURT OF COMMON PLEAS,

UNDER THE STAT. 6 VICT. c. 18.

IN

TRINITY AND MICHAELMAS TERMS,

IN THE

TWELFTH AND THIRTEENTH YEARS OF THE REIGN
OF VICTORIA.

June 8th.

PALMER, Appellant; and ALLEN, Respondent.

By sect. 35 and
schedule (O)
39. of the
Boundary Act,
the borough of
Bewdley in-
cludes the

parish of *Ribbesford*, part of which parish, called the *Far Forest*, is so detached from the main body thereof, that, by reason of including it, the boundary of the borough established by that act would not be continuous. The *Far Forest* was part of the borough of *Bewdley* before the passing of the Boundary Act; and, before that act passed, the right to elect members for the borough belonged to the bailiff, the capital burgesses, *who were obliged to reside within the borough*, and the common burgesses, who were appointed by the capital burgesses.

Held, per *Wilde C. J.* and *Maule J.*, that the *Far Forest* being part of the old borough of *Bewdley*, within which the capital burgesses might have resided, was part of such borough for the purpose of the election of members of parliament, and therefore came within the saving words of the 37th section of the Boundary Act:

Per *Cresswell J.* and *Williams J.*, *contra*, that the proviso was intended to preserve existing personal rights of voting, reserved by the 33rd section of the Reform Act, and consequently that the *Far Forest* did not form part of the present borough of *Bewdley*.

AT a Court held on the 30th October, 1847, before
George James Philip Smith Esq., the revising
barrister for the borough of *Bewdley*, *William Green*

claimed to have his name inserted in the list of persons entitled to vote in the election of a member to serve in parliament for the said borough in respect of a house and land in *Far Forest*.

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The facts of the case were as follows:—

The house and land, in respect of which *William Green* claimed to have his name inserted in the list of persons entitled to vote in the election of a member to serve in parliament for the said borough, are situated in a part of the parish of *Ribbesford*, called the *Far Forest*. The *Far Forest* is, and before the passing of the statute next mentioned always was, a part of the borough of *Bewdley*, but is so detached from the borough that, by reason of including it, the boundary of the said borough, established by 2 & 3 Will. 4. c. 64., would not be continuous. By section 7 of stat. 2 & 3 Will. 4. c. 45. it is enacted “that every borough which returns a member or members to serve in parliament shall, for the purposes of this act, include the place or places respectively which shall be comprehended within the boundaries of every such borough, as such boundaries shall be settled and described by an act to be passed in this present parliament, which act, when passed, shall be deemed and taken to be part of this act as fully and effectually as if the same were incorporated herewith.” By stat. 2 & 3 Will. 4. c. 64. s. 35. and schedule (O) 39. to that act, the borough of *Bewdley* includes the parish of *Ribbesford*, and the several hamlets mentioned in the said schedule. By section 37 it is enacted “that, notwithstanding the generality of any description contained in schedule (O), no borough, the contents whereof are specified in such schedule, shall include any part of any parish which

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is detached from the main body of such parish, if, by reason of including such detached part, *the boundary hereby established of such borough would not be continuous*, unless such detached part shall, before the passing of this act, have formed part of such borough *for the purpose of the election of members of parliament.*"

By section 33 of 2 & 3 Will. 4. c. 45., after enacting that no person shall be entitled to vote in the election for any borough, except in respect of some right conferred by that act, or as a burgess or freeman, it is provided "that every person then having a right to vote in such election in virtue of any other qualification than as a burgess or freeman, &c. shall retain such right of voting so long as he shall be qualified as an elector, according to the usages and customs of such borough, or any law then in force, and shall be entitled to be registered" &c., upon and under certain conditions and restrictions therein specified.

James I., by a charter granted in the third year of his reign, reciting (among other things) "that the burgesses and inhabitants of the borough of *Bewdley*, in the county of *Worcester*, had used and enjoyed divers privileges, franchises, immunities, fairs, markets and pre-eminences, by divers charters to them theretofore made, granted, and confirmed by the name of 'The Burgesses of the town of *Bewdley* and precincts of the same,' and by the name of 'Burgesses and Inhabitants of *Bewdley*,' and by the name of 'The Bailiff, Burgesses and Inhabitants of the Town or Borough of *Bewdley*,' and that doubts, defects, and inconveniences had appeared in the said charters," did constitute and declare (among other things) that the burgesses and inhabitants of the town of *Bewdley*, and the bailiff,

burgesses and inhabitants of the town or borough of *Bewdley*, by whatsoever name or names they had been theretofore incorporated or not incorporated, and their successors, should be for ever thereafter one body corporate and politic, by the name of "The Bailiff and Burgesses of the Borough of *Bewdley*, in the county of *Worcester*," and that by the same name they might have perpetual succession, and that they might also have a common seal. The charter further declared that the said borough and the compass, circuit, limits, and precincts thereof and jurisdiction of the same should extend to the same boundaries and limits as the same had been used to extend unto, and that it should be lawful for the bailiff and burgesses of the said borough to make perambulations for the true and better knowing of the same. It further declared, that there should be elected and appointed within the said borough, out of the rest of the burgesses of the said borough, one of the best and most discreet of the burgesses, who should be named the bailiff of the said borough, and should be elected in the manner and form thereafter specified. And that there should be from time to time thereafter within the said borough twelve burgesses residing, dwelling, and inhabiting within the said borough, elected and chosen out of the rest of the burgesses in the manner and form thereafter declared, who should be called capital burgesses of the said borough, which said bailiff and twelve capital burgesses of the said borough, or the major part of them (of which the bailiff for the time being to be one) from time to time for ever thereafter should have power to elect and appoint such and so many other men inhabitants or not inhabitants of the

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borough aforesaid, who had not been retained with, or servants to any nobleman or gentleman, to be thereafter burgesses of the said borough, as to them the said bailiff and twelve capital burgesses should seem fit and convenient, every one of which burgesses, capital burgesses, or inhabitants of the said borough who thereafter should serve with or be retained by any nobleman or gentleman was to be immediately and *ipso facto* removed, and lose his office of burgess of the said borough, and his liberty of using any art or mystery within the said borough. And it was ordained that the capital burgesses of the said borough from time to time should be aiders or assisters to the bailiff of the said borough for the time being, in all matters, causes, and things touching or concerning the said borough; and it granted to the bailiff and burgesses of the said borough, and to their successors, that the bailiff and twelve capital burgesses for the time being, and their successors, or the major part of them (of which the bailiff for the time being to be one) being assembled in the Guildhall of the said borough, or any other convenient place within the said borough, should have full power and authority to make and establish rights, ordinances, laws, statutes, and constitutions, which to them, or the major part of them, should appear good, useful, and necessary for the good rule and government of the bailiff and burgesses of the said borough. And the charter named and constituted twelve persons, inhabitants of the said borough, to be the twelve first and modern capital burgesses of the said borough, and to continue in the office of capital burgesses so long as they should live and continue within the said borough. It then named the first bailiff of the said borough, and

further granted to the said bailiff and burgesses for the time being, or the major part of them, from time to time for ever thereafter, to have power yearly in the month of *September* to assemble and elect one of the burgesses of the said borough to the office of bailiff of the said borough for one entire year then next ensuing. And it declared that when any one or more of the capital burgesses should die, or dwell out of the said borough, or should be removed from office, it should be lawful for the bailiff and the rest of the capital burgesses, or the major part of them, to elect another or others of the burgesses inhabiting within the said borough, within fifteen days next after such death or removal, into the said office or offices of capital burgess or burgesses, in the place or places of the capital burgess or burgesses that should happen to be dead, or absent, or removed. The charter also ordained and granted that for ever thereafter at every parliament to be held within the kingdom of *England* there should be one burgess serve in parliament for the said borough, and that the said bailiff and burgesses of the said borough, and their successors, upon every writ to be to them directed for the election of a burgess to serve in parliament, should have power, licence, and authority of electing and naming one discreet and honest man, being a burgess of the said borough, to be the burgess in parliament for the said borough, and the said burgess so elected and named as aforesaid, at the costs and charges of the bailiff and burgesses of the said borough, and their successors for the time being, should send to parliament whensoever the same should be held, in manner and form as in other boroughs or towns corporate is used and accustomed; which parliamentary burgess so elected and

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named as aforesaid, was required to continue at parliament at the costs and charges of the bailiff and burgesses of the said borough, during the time which such parliament should be held, in manner and form as other burgesses in parliament for any other borough or town corporate whatsoever have used to do or been accustomed to have done; which burgess in such parliament was to have his voice as well in the affirmative as in the negative, and might do and execute all such things as any other parliamentary burgess for any other borough or town corporate whatsoever could do and execute by any reason or means whatsoever.

Queen *Anne*, by a charter granted to the bailiff and burgesses of the borough of *Bewdley* in the seventh year of her reign, after reciting (among other things) that one only of the capital burgesses mentioned in the letters patent of *James I.*, or that afterwards was duly elected by virtue of the same, then remained and was surviving, so that there was wanting a sufficient number of capital burgesses to put in execution the necessary powers granted by the said letters patent, by reason whereof many differences and doubts had arisen and were likely to arise between the bailiff and burgesses of the said borough concerning the election of a bailiff and other officers of the said borough, to the great expense and impoverishment of the burgesses of the said borough, and to the public prejudice and grievance, confirmed the charter of King *James I.*

The two charters were to be considered as forming part of the case.

The revising barrister decided that the part of the parish of *Ribblesford* so detached from the borough as aforesaid had not, before the passing of the stat. 2 &

3 Will. 4. c. 64., formed part of the borough of *Bewdley* for the purpose of the election of a member of parliament for the said borough, and he therefore disallowed the claim of *William Green*, as well as the claims of fifteen other persons, whose appeals against his decision were consolidated with that of *Green*.

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The case was argued in *Hilary* term, 1848 (*January* 27th) by *Whateley* for the appellant, and *W. J. Alexander* for the respondent; but the arguments are omitted, being fully noticed in the judgment of the Court.

Cur. adv. vult.

There being a difference of opinion, their lordships now delivered their judgments *seriatim*.

WILLIAMS J. This is an appeal from the decision of the revising barrister for the borough of *Bewdley*. He decided that a certain part of the parish of *Ribbesford*, called the *Far Forest*, and detached from the borough, so that by including it the boundary would not be continuous, had not before the passing of the stat. 2 & 3 Will. 4. c. 64., formed part of the borough for the purpose of the election of a member of parliament for the borough. I am of opinion that his decision was right. The question arises under the 37th section of the statute, by which it is enacted "that, notwithstanding the generality of any description contained in the schedule of the act, no borough shall include any part of any parish, or which is detached from the main body of such parish &c., if, by reason of including such detached part, the boundary of the borough would not be continuous, unless such detached part shall, before the passing of the act, have formed part of such bo-

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rough for the purpose of the election of members to serve in parliament. The *Far Forest* formed part of the borough at and before the passing of the act; but the question is, whether it formed part of it for the purpose of parliamentary elections. The ground on which it was contended in the affirmative was this, viz. that by the charter of the borough the election of a member to serve in parliament was in the bailiff and burgesses of the borough, and that the burgesses themselves were elected by the bailiff and twelve capital burgesses; and that by the terms of the charter, although inhabitancy within the borough was not a requisite qualification for an ordinary burgess, yet it was so for a capital burgess. The argument therefore was, that inasmuch as before the statute a residence within the *Far Forest* would have qualified a capital burgess in respect of inhabitancy within the borough, and thus would have formed part of his qualification to elect the burgesses who were to elect the member, the *Far Forest* formed part of the borough for the purpose of parliamentary elections within the meaning of the statute. But I am of opinion that this connection with the parliamentary elections is not direct enough to satisfy the statute. The statute assumes that some parts of a borough may, and some may not, have formed part of it for the purpose of the election of members; and since every part of a borough may, in some remote sense, be said to have formed part of it for some purpose connected with such election, it seems to follow that we are precluded from construing the statute in that wide and general sense which was contended for by the counsel for the appellants. It appears to me that the object of the legislature, in this part of the statute, was to sustain the elective rights of

persons whose rights are reserved by the 33rd section of the Reform Act, and who may, by complying with the conditions of that act, retain their rights for life; such as inhabitants paying scot and lot, potwallers, and freehold and burgage tenants in cities and boroughs (not being counties in themselves) in which freeholders and burgage tenants have a right to vote. And I think the saving part of the section now under consideration (2 & 3 Will. 4. c. 64. s. 37.) was not intended to apply to any detached part of any parish &c. (such as is described in the earlier portion of the section), unless before the passing of the act such detached parts so formed a part of the borough for the purpose of the election of members, that the exclusion of it would in some way interfere with the exclusion of those rights. I am therefore of opinion that the decision of the revising barrister should be affirmed.

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CRESSWELL J. The decision of this case depends upon whether a part of the parish of *Ribbesford*, called *Far Forest*, before the passing of the 2 & 3 Will. 4. c. 64., formed part of the borough of *Bewdley* for the purpose of the election of members of parliament. The *Far Forest* was before and at the time of passing that act part of the ancient borough of *Bewdley*, and in the schedule to that act the borough was described as containing, amongst other places, "the parish of *Ribbesford*;" but if that part of it called the *Far Forest* was included, the boundary established by that act would not be continuous. The 37th section would therefore have the effect of excluding it, unless before the passing of that act it formed part of the borough for the purpose of the election of members of parlia-

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ment. By charter of *James* the First, the bailiff and burgesses of *Bewdley* had a right to return a member to parliament. By the same charter, twelve capital burgesses were nominated, and that body was to be thereafter kept up by elections from the common burgesses, and the office of capital burgess required residence within the borough. To the bailiff and capital burgesses power was given from time to time to elect and appoint such and so many other men, inhabitants or not inhabitants of the borough (with certain restrictions) to be thereafter burgesses of the borough. It was contended, that as the capital burgesses nominated those who afterwards had a right to vote in the election of a member of parliament, and residence in the *Far Forest* would enable a capital burgess to retain his office, which would be lost by non-residence, *Far Forest* was part of the ancient borough for the purpose of electing a member of parliament. But I am of opinion that its connection with the election of a member of parliament was too remote to bring it within the saving part of the section under consideration. It may be collected from the 33rd section of the Reform Act, 2 Will. 4. c. 45., that it was the intention of the legislature to preserve to all persons the rights of voting which they then had, provided they were only registered, and the object with which all places theretofore forming parts of boroughs for the purpose of electing members of parliament were retained as parts of those boroughs, notwithstanding the first part of the 37th section of the Boundary Act, appears to have been to render complete the preservation of rights of voting then existing. If any persons had then enjoyed a right of voting, by reason of residence or the occupation of

premises in *Far Forest*, I should have thought it was part of the borough for the purpose of electing members of parliament. But there was no such right; nor would any then-existing right of voting be preserved to any individual by retaining *Far Forest* as part of the borough. The only effect of retaining it would be to give to persons occupying premises within it, some of the new rights of voting created by the Reform Act; whereas it appears to have been the primary intention of the legislature to give no such rights in respect of outlying districts, unless that were necessary, in order to accomplish some other object of the act. If it had been necessary to retain *Far Forest* as part of the borough of *Bewdley*, for the preservation of any old rights of voting which the legislature intended to preserve, it would have been part of it for the acquisition of the newly created right also. But as no rights of voting enjoyed at the time of passing the Reform Act depended upon the retention of *Far Forest* as part of the borough, I think it was not part of the borough for the purpose of electing members of parliament; and that, consequently, the decision of the revising barrister was correct, and that the appeal must be disallowed.

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MAULE J. The question in this case is, whether the *Far Forest*, being a detached part of the borough of *Bewdley*, was before the 2 & 3 Will. 4. c. 64. part of the borough of *Bewdley*, for the purpose of the election of members of parliament. The election of members of parliament belonged by the charter of *James the First* to the bailiff and burgesses. The burgesses were appointed by the capital burgesses, who must be resident

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within the borough, including the *Far Forest*. Inasmuch, therefore, as the right to elect members of parliament depended on the electors being burgesses of *Bewdley*, and their being such burgesses depended on their being appointed by the capital burgesses, whose right to appoint depended on their residence within the borough, including the *Far Forest*, it appears clear to me that the *Far Forest* was a part of the borough for the purpose of the election of members of parliament.

WILDE C. J. The section of the statute, and also the facts of the case upon which the question before the Court depends, have been so distinctly referred to by my learned brothers, that it is unnecessary for me to repeat them in detail. The question is, whether before the passing of the Reform Act the *Far Forest* formed part of the borough of *Bewdley* for the purpose of the election of members to serve in parliament, within the meaning of the enactment in the 37th section of the Boundary Act. In considering that question it is to be observed in the first place, that the members for *Bewdley* before the passing of the Boundary Act were elected by the common burgesses of the borough, who were nominated by the capital burgesses of the borough resident within the borough; and that *Far Forest* was a part of the borough, residence in which would qualify a capital burgess to vote in the election of a common burgess. The boundary of the parliamentary boroughs created by the 2 *Will. 4. c. 45.*, was prescribed by that act, and by the 2 & 3 *Will. 4. c. 64.*, and it seems to me that the legislature intended on the one hand to prevent any outlying district forming part of a parish being *newly* added to a borough; and on the other hand, that

it was intended cautiously to abstain from excluding from an old parliamentary borough any part or district which had before the passing of that act formed part of the borough for any purpose connected with the parliamentary election, and I think the very general words upon which the Court has now to put a construction, were adopted as the best calculated to secure the latter object; and therefore it seems to me to be the duty of the Court to give a liberal construction to those words. I have endeavoured to construe the statute in reference to these views, and I consider that if the words used had been intended to be confined to those parts of a borough in which residence constituted part of the qualification of the parliamentary voters, it is obvious such intention might have been unequivocally expressed, and I think such a construction of the words would be too narrow; but I also think, that the circumstance that residence in a certain district locally situate within the borough gave the residentiary qualification of the electors of the parliamentary constituency, tended to constitute that district a part of the borough for the purpose of the election of members of parliament. If the words to be construed do not exclude all outlying parts of the borough but those in which residence was part of the qualification of the parliamentary voter, it remains to be considered what circumstances or other incidents would constitute a particular part of the borough a part of such borough for the purpose mentioned; and it is to be observed that the proclamation of the writ for holding the election is made within the parliamentary borough, the election takes place within the parliamentary borough, the poll is taken within the parliamentary borough, and the election is declared in

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the parliamentary borough. All these acts might have taken place exclusively in *Far Forest*, as a part of the borough for the purpose of the election of members to serve in parliament, before the passing of the Reform Act; and it seems to me difficult to say, that as the election must take place within the borough, the place where the election may be held is not a part of the borough for the purpose of the election of members to serve in parliament. Regard, therefore, being had to what I consider to have been the object of the legislature in the enactment in question, and giving such a construction to the words in question as they will reasonably bear to effectuate that object, I am led to the conclusion that the circumstances before mentioned constituted *Far Forest* a part of the borough within the meaning of the enactment in question, and that the barrister's decision was erroneous, and ought to be reversed; but in the state of opinion entertained by the Court, the decision will remain undisturbed. The opinion I have expressed is entertained with the greatest deference and respect to the opinion of my two learned brothers who have arrived at a different conclusion. No rule can be made upon this appeal.

No rule.

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MICHAELMAS TERM.

November 12.

WHITE, Appellant; and PRING, Respondent.

WHEN this case was called on, the appellant did not appear.

The Court will affirm the decision of the revising barrister with costs, where the respondent appears to support the decision, and the appellant does not appear.

A. M. Skinner, for the respondent, prayed for judgment, with costs, citing *Bage v. Perkins* (a), and *Crocker v. The Overseers of St. Mary, Lambeth*. (a)

Per Curiam.

Decision affirmed, with costs.

(a) *Antè*, Vol. I. p. 255.

POWELL, Appellant; and CASWELL, Respondent. November 26.

WHEN this appeal from the decision of the revising barrister for the borough of *Kidderminster* was called on in its order on the 12th *November*, no counsel appeared for the respondent.

It is unnecessary for an appellant to give the respondent notice of the appeal having been set down for hearing; ten days' notice of his intention to prosecute it being all that is required.

Keating, who appeared for the appellant, produced an affidavit to shew that due notice of the intention to prosecute the appeal had been given to the respondent,

The Court refused a rule for restoring an appeal to the list for the purpose of having it argued, the decision of the barrister having been reversed, without argument, on the 12th *November*, and there being nothing to shew that the register had not been since altered accordingly.

1849. and asked for the judgment of the Court; whereupon the
 decision of the revising barrister was overruled without
 argument.

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Willes now moved for a rule, calling upon the appellant to shew cause why the appeal should not be restored to the list, and argued; on the ground that notice of the appeal having been set down for hearing ought to have been given to the respondent, as in the case of a demurrer or special case. Moreover, the case ought to have been argued, though the respondent did not appear; *Cooper v. Harris (Austin's Case)* (a). [*Wilde C. J.* The master informs us that the only thing required from the appellant, when the respondent does not appear, is an affidavit of service of the notice of intention to prosecute. *Maule J.* The ten days' notice given under the statute is in substitution of the notice of entry for hearing required in the case of a demurrer.] The Court has a discretionary power; which it will exercise to prevent the disfranchisement of many persons in this case by the reversal of a decision which the Court will see on the face of it to be correct.

WILDE C. J. We do not know but that the register may have been altered by this time. You ought to shew that matters are in the same position as they were when our order was made, before the Court can entertain the question.

Per Curiam.

Rule refused (b).

(a) *Antè*, Vol. I. p. 207. *Cooper v. Harris (Austin's Case)*, that the appellant's case
 (b) The rule laid down in

shall be argued before the Court will reverse the decision of the revising barrister, even when the respondent does not appear, was followed in *Cooper v. Harris* (Clenishaw's Case) antè, Vol. I. p. 228, note; *Colville v. The Town Clerk of Rochester*, Id. 380, note (a); *Colvill v. Wood*, Id. 483; and *Fox v. The Overseers of Shaston St. Peter, Shaftesbury*, Vol. II. p. 97. The only apparent exceptions to the uniformity of the practice are presented by the cases of *Newton v. The Overseers of Mobberley* and *Newton v. The Overseers of Crowley*, antè, Vol. I. p. 427;

but the chief point involved in those cases had been so often previously discussed, that the appellant's counsel declined to offer any argument; and it is also to be observed that in those cases the Court took time to consider their decision.

If the Court should act hereafter upon the precedent now established by *Powell v. Caswell*, it will be advisable for respondents to appear by counsel, unless they be perfectly indifferent to the condition of the register, about which, indeed, official respondents can hardly be expected to care much.

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MICHAELMAS VACATION.

CAPELL, Appellant, and the Overseers of ASTON, *November 30.*
Respondents.

BURTON, Appellant, and the Overseers of ASTON,
Respondents.

AT the Court holden on the 27th day of *September*, 1849, for the revision of the list of voters for the parish of *Aston*, in the town of *Birmingham*, before *Stephen Charles Denison Esq.*, the barrister appointed to revise the lists of voters for the northern division of the county of *Warwick*, *David Capell* claimed to have

The owner and occupier of freehold land within a borough, of the clear yearly value of 40s., who also occupies, as tenant, a house within the borough at a

distance from the land, is entitled to be registered as a voter for the county, whether the house be of sufficient value to confer the borough franchise, or not.

To enable a party to acquire the borough franchise, under the 27th section of the Reform Act, by adding the value of land to that of a house or building in itself insufficient, both properties must be occupied as owner, or as tenant under the same landlord.

1849.	his name inserted in the list of county voters for the said parish, as follows : —			
CAPELL v. Overseers of ASTON. BURTON v. Overseers of ASTON.	Capell, David	46. Pershore Street, Bir- mingham.	Freehold Building Land.	Weston Street, near Bloomsbury Street, Duddes- ton Manor, in the Liberty of Ne- chells.

It was proved that *David Capell* owned and occupied freehold land in the parish of *Aston*, of more than the clear yearly value of 40s., and also occupied, as tenant, a house of more than the clear yearly value of 10l., in the parish of *Birmingham*, at a distance from the land. Both the house and the land were within the limits of the borough of *Birmingham*. It was objected, that under statute 2 *W. 4. c. 45. ss. 24. and 27. David Capell* was not entitled to vote for the county in respect of his land; as the house and the land were to be taken together as forming a borough qualification.

The revising barrister held the objection good, and disallowed the claim, as well as those of twelve other persons, whose appeals were consolidated with *Capell's* case.

At the same Court, *John Burton* claimed to have his name inserted in the list of county voters for the said parish as follows : —

Burton, John].	34. Court, Lower Brearley Street, Birmingham.	Freehold Building Land.	Bloomsbury Street, in the Liberty of Nechells, in the Parish of Aston, in the Borough of Birmingham.
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It was proved that *John Burton* owned and occupied freehold land in the parish of *Aston*, of more than the clear yearly value of 40s., and also occupied as tenant a house of less than the clear yearly value of 10l., in the parish of *Birmingham*, at a distance from the land. Both the house and the land were within the

limits of the borough of *Birmingham*, and taken together were of sufficient value to form a borough qualification. It was objected that under statute 2 *W.* 4. c. 45. ss. 24. 27., *John Burton* was not entitled to vote for the county in respect of his land, as the house and land were to be taken together as forming a borough qualification.

The revising barrister disallowed the claim, and consolidated the appeal of another person, whose claim to vote rested on precisely similar grounds, with *Burton's* case.

Capell's case was argued by

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D. D. Keane (*Lutwyche* with him), for the appellant (*November* 12th). The 24th section of the Reform Act enacts, that "no person shall be entitled to vote in the election of a knight or knights of the shire to serve in any future parliament in respect of his estate or interest as a freeholder in any house &c., occupied by himself, or in any land occupied by himself *together with* any house &c., such house &c. being either separately, or jointly with the land so occupied *therewith*, of such value as would confer on him the right of voting for any city or borough, whether he shall or shall not have actually acquired the right to vote for such city or borough in respect thereof." To deprive the appellant, therefore, of the franchise which he is entitled to under the stat. 8 *Hen.* 6. c. 7., the land in his occupation must be occupied "together with" his house. But it is found by the case that the land is *at a distance* from the house. The house and land are not even in the same parish. The revising barrister, therefore, was not warranted in considering whether the

1849. 27th section applied at all ; because the facts as set out in the case do not bring it within the words of the 24th section. The decision might be upheld if the words "together" and "therewith" were omitted in that section, but it will be impossible to satisfy the words which occur there upon the construction which the revising barrister adopted. [*Wilde C. J.* What do you mean by "occupied together."] The house and land must be so occupied, that the occupation resulting from the two acts of occupation shall substantially be one ; as, for instance, the occupation of a house in the midst of a park ; the occupier would then occupy both the house and the land, and the land "together" with the house. But if the house were separated from the land by an intervening space, the case would be different. [*Wilde C. J.* So, according to your argument, a house on one side of a high road and a garden opposite would not be an occupation "together with."] The high road is a public thoroughfare, but if the occupier could not go in a straight line from his house to his garden, without committing a trespass, the house and garden would not be occupied "together." In *Powell v. Price (a)*, the Court held that a shop of which the appellant was owner and occupier, could not be joined with a house, of which he was also the owner and occupier, so as to make up one entire qualification under the 27th section of the act ; upon the ground that such house and shop were not within the same curtilage. There ought to be local contiguity, or at least proximity, to satisfy the meaning of the 24th section. When there is local separation between the house and land, and each of them is of sufficient value,

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(a) *Antè*, Vol. I. p. 586.

as in the present case, the occupier of such house and land is entitled to vote both for the borough and the county, if a right construction be put upon the terms of the 24th section. But secondly, can the land in respect of which the appellant claims a county vote be joined with the house, so as to form one entire borough qualification, within the meaning of the 27th section of the act? The 24th section does not take away the county franchise, unless the qualification will entitle the party to a borough vote. Now, the 27th section provides that "every person who shall occupy within a borough, as owner or tenant, any house &c. being either separately, or jointly with any land within such borough occupied *therewith* by him as owner, or occupied *therewith* by him as tenant under the same landlord, of the clear yearly value of not less than 10*l.*, shall, if duly registered, be entitled to vote for the borough." It is submitted, that the proper mode of reading these words is *reddendo singula singulis*, that is, such person must occupy both house and land *as owner*, or he must occupy both *as tenant*. There must be unity of title. [*Maule J.* If he is a tenant of both, it is clear that the statute requires that he should be tenant under the same landlord. It does not permit tenancy under one landlord and tenancy under another to be joined together; and that would exclude tenancy under one landlord coupled with an ownership of his own.] That appears to have been the view taken by *Erle J.* in *Dewhurst v. Fielden* (a), though the point was not decided by the Court. In the report of that case published by Mr. *Scott* (b), the learned judge is repre-

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(a) *Ante*, Vol. I. p. 274.(b) 8 *Scott*, N. R. 1013.

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sented to have said "the 27th section requires that one building of a certain value shall be occupied in order to obtain the franchise, or land may be joined to the building; but if the land is occupied by the party as tenant, it must be held under the same landlord. It is not every species of land that may be joined to a building for that purpose." And in another report of the same case (a) he is made to say, "The words in the statute are used in the singular number alone, and the voter may also hold one such thing and land provided he holds it as owner, or he occupies it therewith as tenant under the same landlord. It is not, therefore, every species of land which would entitle the party to vote if held with a building, neither is it land alone which would do so. Thus, a freehold building of the value of 9*l.* could not be joined to leasehold land of the same value." Upon the whole, therefore, it is submitted that the decision of the revising barrister in this case cannot be supported.

Mellor, for the respondents. The object of the 24th section of the Reform Act was to prevent any person who owned and occupied freehold property situate in a borough, of sufficient value to give a borough vote, from voting in respect of any part of that property for the county. That view of the case is very much strengthened by referring to the next section, the 25th, which excludes *any* person from the county franchise in respect of certain copyholds and leaseholds within a borough, if of sufficient value to give a borough qualification; not confining the exclusion to a case in which

(a) 14 *Law Journ.* (N. S.) C. P. 128.

the owner and occupier are the *same* person. What, then, is the property which comes within the purview of the 24th section? It is contended on the other side that the words "together" and "therewith" in that section refer to *space*, but it is submitted that they evidently refer to *time*. The words of the section are satisfied if the building and land are occupied contemporaneously by the same person. In *Powell v. Price (a)*, *Wilde* C. J. said, "It may be considered as settled that 'by the grant of a messuage or house, the garden, orchard, and curtilage do pass.'" The garden and orchard must mean something very distinct from the curtilage, or the words here cited from *Co. Litt.* would be insensible; and the garden and orchard may be, and in point of fact frequently are, at a distance from the house, though it is clear that they would form an ingredient in any question arising upon the value of the premises occupied. With regard to the land and the house in this case not being within the same parish, that is an immaterial circumstance; it is enough if they be both situate within the borough, and the revising barrister has found that they are so situate. That being so, the real question upon the construction of the 24th section is, whether the property which the appellant occupied contemporaneously was of sufficient value to confer a vote for the borough of *Birmingham*, and the barrister, therefore, came to a right conclusion in disallowing the claim to a county vote. *Dewhurst v. Fielden (b)* and *Powell v. Price (c)* throw no light on the question now under discussion, turning as they did entirely on the construction put by the Court on

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(a) Antè, Vol. I. p. 590.

(b) Antè, Vol. I. p. 274.

(c) Antè, Vol. I. p. 586.

1849. the words contained in the 27th section, viz. "house, warehouse, counting-house, shop, or other building, being either separately, or jointly with any land occupied therewith, of the annual value of 10*l*." The point decided by the Court in each of those cases was, that two buildings, houses, or shops, of which the value was insufficient, could not be united for the purpose of making up the requisite value. In order, however, to see who are excluded under the 24th section, which disqualifies as county voters those who are entitled to the borough franchise, it becomes material to examine the provisions of the 27th section, which defines the conditions of the borough qualification, and see who are included by it. It is contended for the appellant that this section is confined to two classes of cases, but it is submitted that it embraces three at the least. The owner of a house who is also owner of land is admitted to be within it, and so is the tenant of a house and the tenant of land. But the provisions of the section equally apply to the tenant of a house who is owner of land, and to the tenant of land who is owner of a house. In either of the cases last put, the respectability of a party is more likely to be insured than if he were merely tenant of a house and land. If the opinion expressed by *Erle J.* in *Dewhurst v. Fielden* (a) had been necessary to the decision of the case, the point might not have been open to argument, but at present the *dictum* attributed to the learned judge must be regarded as extra-judicial.

Keane, in reply. It is not sufficient to satisfy the 27th section, if the value of the occupation be 10*l*. in

(a) 8 *Scott*, N. R. 1013.

the aggregate. In *Dewhurst v. Fielden*, it was remarked by *Tindal C. J. (a)*, "It may well be that the legislature considered that a man who occupies a house worth 10*l.* yearly may be in a proper condition of life to exercise the franchise, while they were unwilling to entrust it to one who would be obliged to add together a number of small and worthless tenements, in order to eke out an annual value of 10*l.*"

The Court intimated that they would have *Burton's* case argued, before they expressed any opinion upon *Capell's* case.

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D. D. Keane (Lutwyche with him) for the appellant. The distinction between this and the last case is, that the house occupied by *Burton* is of less than the clear yearly value of 10*l.* The principle, however, which governs both cases is the same, and it would be improper to repeat arguments which have been already urged. But in this case the appellant has no borough qualification, unless the house and land, which are in different parishes, can be united for the purpose of making up the requisite annual value. To entitle him to be registered as a borough voter, he must be rated; and the 30th section provides, "That in every city or borough which shall return a member or members to serve in any future parliament, and in every place sharing in the election for such city or borough, it shall be lawful for any person occupying any house, warehouse, counting-house, shop, or other building, either separately or jointly with any land occupied therewith by him as owner, or occupied therewith by him as

(a) *Antè*, Vol. I. p. 277.

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tenant under the same landlord, *in any parish or township*, in which there shall be a rate for the relief of the poor, to claim to be rated to the relief of the poor in respect of such premises, whether the landlord shall or shall not be liable to be rated to the relief of the poor in respect thereof." There is no provision in this section for the circumstance of the house and land being in different parishes, and the interpretation clause (section 79) does not direct that words importing the singular number only shall extend to the plural. The conclusion, then, seems to be irresistible, that the premises out of which the borough qualification springs must be situate in *one* parish, which greatly fortifies the argument that there should be a singleness of occupation, and not a mixed title. [*Maule J.* According to your argument, if a house and land were close together, and held under the same landlord, yet if the land were in one parish, and the house in an adjoining parish, the tenant could not be rated in respect of either, for the purpose of obtaining a borough vote.] It is submitted that he could not, unless the house were of itself of sufficient value. [*Maule J.* That is a very improbable view of the case. But the language of the section perhaps affords you some ground for saying that the occupation of house and land must be either as owner, or as tenant. It says, "It shall be lawful for any person occupying any house &c., either separately, or jointly with any land occupied therewith by him as owner." The natural meaning of that is, that both the house and the land must be occupied by such person as owner. Then comes the second case put by the section, "or occupied therewith by him as tenant under the same landlord;" which must mean tenant under the

same landlord of both. *Talfourd J.* With regard to the rating, there is nothing in the section which requires that the premises shall be in one parish.] If the opinion of the Court be against the appellant on that point, it will not be insisted on: though the 68th section, which requires that each person shall vote at the booth appointed for the parish or district, wherein the property may be situate in respect of which he claims to vote, seems to have been framed for the purpose of avoiding the difficulty which would arise if the property were situate in two different parishes.

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Mellor for the respondents. With respect to the last objection, there would be no difficulty in ascertaining in what parish a party should vote, because he would vote not in respect of the occupation of land, but in respect of the occupation of a house which, together with certain land, would make up an occupation of sufficient value to confer a borough qualification. He would poll in the booth appropriated to the parish in which his house was situate. [*Wilde C. J.* Suppose the house to be in two parishes. I have occupied a house precisely in that situation.] He might vote in either. With reference to the difficulty which has been suggested to be involved in the terms of the 30th section, it is submitted that they do not carry the argument for the appellant further than the 27th section. The subject-matter which is to give the vote being occupation of a house &c., the words "any person occupying any house &c." may mean "any owner or tenant occupying such house," either separately, or in conjunction with any land occupied at the same time either in the character of owner or tenant. [*Williams J.* You contend that the land is merely an

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adjunct.] It is a mere accessory; the foundation on which the qualification rests is the occupation of a house. [*Maule J.* You say that local contiguity is not required for the house and land, but that the space which divides them may be as wide as the limits of the borough itself will permit. Then do not the words "occupied *therewith* by him as tenant *under the same landlord*" mean something? The words "therewith" and "under the same landlord" require an identity of the person under whom he holds as tenant.] The identity of the landlord may coincide with the occupation of the land, but the section does not require it. [*Maule J.* If "therewith" means nothing more than contemporaneous occupation, it is superfluous.] That word was inserted in order to shew that the occupation of the land must have lasted during the *whole* of the qualifying period; without it, an argument might have been raised that the land might have been held for a *portion* of the period only. [*Maule J.* There is no occasion for words to express that the occupation must be for the same time, and must last the time necessary to confer the franchise.] It may be that the word was introduced out of abundant caution.

Keane replied.

Cur. adv. vult.

The judgment of the Court was now delivered by
 WILDE C. J. These were appeals from the decision of the revising barrister for the northern division of the county of *Warwick*, whereby he disallowed the claims of the appellants to be placed on the register as voters for the county, in respect of freehold land occupied by

themselves within the borough of *Birmingham*, of more than the full yearly value of 40s. In each case the appellant occupied a house as tenant within the borough, and also occupied his own freehold land within the borough, but situate at a distance from the house, and in a different parish, the house in each case being in the parish of *Birmingham*, and the land in the parish of *Aston*. The cases differ only in this circumstance, that in the case of *Capell*, the house of which he is tenant is of the annual value of 10*l.*, and therefore confers the borough qualification without the land in question; in that of *Burton* the value of the house alone is less than 10*l.*, but with the addition of the value of the land amounts to that sum. Although this difference would create an inconvenient result in the former case, which does not arise in the latter, if the decision of the revising barrister be correct, it appears to us that both depend upon the same question of construction, and must be governed by the same principle. As in these cases the ownership of the land confers a right to vote for the county, unless taken away by the 2 *Will.* 4. c. 45., the question turns on the construction to be given to the 24th section of that act as connected with and expounded by the 27th; the object of the first being to prevent land lying within a parliamentary borough from conferring a double franchise for the borough and for the county, and the last defining the conditions of the borough franchise. The object of the 24th section is to exclude freehold estate occupied by the owner within the borough, which by reason of its occupation may confer the borough franchise, from also conferring a vote for the county within which it is situate. It enacts "That no person shall be entitled to vote in the

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1849. election of a knight of the shire to serve in parliament, in respect of his estate or interest as a freeholder in *any* house, warehouse, counting-house, shop, or other building occupied by himself, or in any land occupied by himself *together with* any house, &c., such house, &c. being either separately or jointly with the land *so occupied therewith* of such value as would, according to the provisions hereinafter contained, confer on him the right of voting for any borough, whether he shall or shall not have actually acquired the right to vote for such borough in respect thereof." On reading this section alone, there seems nothing to indicate that the legislature contemplated other than a freehold interest either in the house or building, which is the principal and essential part of the borough franchise, or in the land, which may be added to it as accessory; but the words "together with," in the first part of the clause, and the word "therewith" in the latter part, seem to import either a local contiguity or a similarity of tenure. This section, however, by reference, incorporates the provisions of the 27th section, which defines the conditions of the borough franchise, and must be explained by it. That section confers the franchise on every person "who shall occupy within any borough, as owner or tenant, any house, warehouse, counting-house, shop, or other building, being either separately or jointly with any land within such borough, occupied therewith by him as owner, or occupied therewith by him as tenant, under the same landlord, of the clear yearly value of not less than 10/." The question on this section is, whether land occupied by a party as owner within a borough can be united with a house, &c., occupied by him as tenant, although not in any manner connected with it;

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and it appears to us that, in order to give effect to all the words of the section, it is necessary to read the clause as applicable to the tenant or owner distributively, and to construe the words "occupied by him therewith as owner," as importing an ownership as well of the house as of the land to be united with it, in harmony with the provision by which tenanted land, to be united with a tenanted house, must be occupied under the same landlord. In this point of view, to enable a party to acquire the borough franchise by adding the value of land to that of a house or building in itself insufficient, both properties must be occupied as owner, or as tenant under the same landlord. Upon the whole, therefore, we think that the land in these cases was not capable of being applied to the purposes of the borough franchise under the 27th section, and, consequently, is not excluded under the 24th from conferring the county franchise on the freeholder. The result is that the appeals must be allowed, and the names of the appellants, and of those other persons whose cases are dependent upon the decision, must be restored to the register.

Decisions reversed.

Keane applied for costs. The respondents were appointed by the revising barrister under the stat. 6 *Vict. c. 18. s. 44.*, but they need not have appeared to support his decision. Having done so, they have made themselves liable to costs; *The Queen v. The Justices of Cumberland.* (a)

Mellor, contra. It would be a great hardship upon the overseers to be obliged to pay costs, when they have

(a) 3 *New Sess. Ca.* 202. See note (a), *antè*, p. 72.

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no choice in the matter, but must become parties to the appeal.

WILDE C. J. When the Court affirms the decision, and thinks it is a case in which the appellant was not warranted in questioning it afterwards, it is not-unusual to give costs, but where the appellant has got the judgment of the Court in his favour it seems unreasonable to call upon the overseers to pay costs.

Application refused. (a)

(a) The first point raised by the case, involving a practical question of great importance, would at first sight appear to be unaffected by the decision of the Court. The question is — can land *at a distance* from a building, when occupied by the same person as owner, or as tenant under the same landlord, be united with the building for the purpose of forming a borough qualification? The language of that portion of the judgment which deals with the 24th section certainly does not include land so situated, for the construction put upon the words “together with” and “therewith” in that section, leaves it doubtful whether those words imported a local contiguity or a similarity of tenure. But when, in commenting upon the 27th section, the judgment adopts the latter branch of the alternative, it should seem, on an application of the rule *expressio unius exclusio est alterius*, that, in the opinion of the Court, local contiguity of the building and land is not required to confer a borough qualification. And there appears to be no sufficient reason, founded either on the policy of the Reform

Act, or on considerations of inconvenience, which militate against this view of the case. The intention of the legislature clearly was to shut out from the county franchise the owner of a building and land of the value of 10*l.* within a borough, if he occupied the premises, and to give him in exchange a borough vote. The value of the property, though separated by intervening space, remains the same, and he is not obliged to “eke it out,” as was said by Tindal C. J. in *Dewhurst v. Fielden*, (antè, Vol. I. p. 277:) “by adding together a number of small and worthless *tenements*.” All that seems to be necessary to give effect to the words of the 27th section is, that the building and land should be occupied by the party as owner, or as tenant under the same landlord. Unity of title, it is apprehended, would not be required, for the party would not the less be owner, if he came into the land by descent, and acquired the building by purchase, nor the less tenant under the same landlord, if he occupied the building and land under different contracts of letting.

CASES

ARGUED AND DETERMINED

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IN THE

COURT OF COMMON PLEAS,

UNDER THE STAT. 6 VICT. c. 18.

IN

MICHAELMAS TERM,

IN THE

FOURTEENTH YEAR OF THE REIGN OF VICTORIA.

LEE, Appellant ; and HUTCHINSON, Respondent. *November 12th.*

AT a court held for the revision of the list of voters for the parish of *Croydon*, before *Samuel Chambers Cross Fish* Esquire, the revising barrister for the Eastern Division of the county of *Surrey*, *John Lee* objected to the name of *John Henry Hutchinson* being retained on the said list.

The facts stated were as follows: the respondent was registered in respect of freehold land, the value of which was *5l.* a year, and he was in possession of the

A mortgagor of freehold premises in possession of the rents and profits is not entitled to vote at the election of a knight of the shire under stat. 6 *Vict.* c. 18. s. 74., unless he has 40 shillings by the year to expend thereout, after deducting all interest on

the principal money secured by the mortgage, when the time for repayment of such principal sum has expired ; and that, whether the payment of such interest be secured by the mortgage deed itself, or be a mere personal liability.

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estate. The property was mortgaged to secure the repayment of 100*l.* lent to the respondent, but the mortgage did not extend to the interest on the loan. The mortgage deed was dated in *September* 1846, and recited that the respondent was indebted to the mortgagee in 100*l.* for money some time previously lent, but that all interest on the same had been paid up to the date of the mortgage. The proviso for redemption was on payment of the principal money only in *September* 1848; and the respondent's covenant was for the payment of 100*l.* sterling in *September* 1848. The power of sale became absolute on default in payment of the principal money in *September* 1848, and the sole trust as to the proceeds of the sale was to retain the principal money only, and to pay the balance to the respondent. In every respect the mortgage was made a security for the principal money only; but it was admitted that the respondent had, nevertheless, regularly paid interest on the loan at the rate of 5 per cent. per annum from the date of the mortgage to the present time. The appellant contended that the respondent's name ought to be expunged, because he had not 40 shillings a year from the land clear of all charges after payment of interest on the loan. The respondent urged that the interest was not charged upon the land, but was merely a personal liability, and that therefore his income derived from the estate was not subject to the payment of it. The revising barrister held there was no charge upon the land operating in reduction of the annual value to the respondent, so as to affect his right to be registered; and that as the mortgagee had not taken possession, the respondent was entitled to remain on the register, and he retained his name accord-

ingly. If the Court should be of opinion that the respondent had not a freehold estate of the annual value of 40 shillings, clear of all charges, then his name was to be expunged from the list.

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Corner for the appellant. There is no substantial distinction between this case and that of *Copland v. Bartlett (a)*, in which the Court decided that a mortgagor in actual possession of a freehold estate of inheritance had no right to vote for a county under stat. 6 *Vict. c. 18. s. 74.*, unless the premises were of the annual value of 40 shillings above all charges, including interest on the mortgage. But though that section empowers the mortgagor in possession to vote, he must still have the estate required by the stat. 8 *Hen. 6. c. 7.*, which ordains that knights of the shire shall be chosen by people who have free land or tenement "to the value of 40 shillings by the year at the least, above all charges." The meaning of an annual value of 40 shillings is explained by a subsequent part of the statute, which enacts that "such as have the greatest number of them that may *expend* 40 shillings by the year, and above, as afore is said, shall be returned by the sheriffs of every county knights for the parliament." The statute again goes on to say "provided always, that he which cannot *expend* 40 shillings by the year, as afore is said, shall in no wise be chosen of the knights for the parliament." These words show plainly the intention of the legislature that a county voter should not merely be in possession of land of a certain annual value, but that he should derive out of it a substantial income, to the extent of

(a) *Antè*, p. 102.

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40 shillings a year at least. It is found by the case that the respondent had regularly paid interest on the loan at 5 per cent., which was the whole annual value of the land. He could not, therefore, have made the declaration required by the stat. 28 *Geo. 3. c. 36. s. 6. (a)*, that he had "an estate of the clear yearly value of 40 shillings over and above the interest of any money secured by mortgage upon the said estate." The difficulty under which the revising barrister seems to have laboured in this case, was that the mortgage deed did not contain any covenant for the payment of interest; but it is apprehended that the absence of such a stipulation does not affect the real question before the Court, for the deed does contain a covenant for the absolute payment of the principal money in *September 1848*, more than a year before the right of the respondent to vote was disputed before the barrister. Supposing, therefore, that the mortgagor desired to redeem the mortgage, he would only be entitled to a reconveyance of the estate upon payment of principal and interest. At all events, it is submitted that the principal money is a charge which covers the whole annual value of the estate, and consequently that the decision of the revising barrister was wrong. [*Williams J.* What is the annual income of the estate? *Maule J.* How many years' purchase would it sell for?] That would depend upon circumstances which the case does not find, but it appears clearly enough that the interest on the sum charged upon the land swallows up the whole of the annual value.

(a) Repealed by stat. 29 *Geo. 3. c. 18.*

Byles, Serjt., for the respondent. The land is of the value of 5*l.* a year, and supposing that interest is payable on the loan, it is not payable out of the land.

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[*Maule* J. The estate is found to be worth 5*l.* a year; but is it a necessary inference from that fact that the respondent's interest in it amounts to 40 shillings a year? It is possible that a sum equal to the national debt might be charged upon it; but would the party have a freehold of 40 shillings a year above that charge? *Jervis* C. J. The question is, what is the value of the respondent's interest after payment of the charge of 100*l.*?] On that point the *onus probandi* does not lie upon the respondent. [*Jervis* C. J. The 42nd section of the Reform Act provides, that if the claimant shall not prove to the satisfaction of the barrister that he was entitled on the first of *July* preceding to have his name inserted in the list of voters, his name shall be expunged.] The revising barrister has found that the respondent was in possession of an estate of the annual value of 5*l.* It is for the opposite party, therefore, to shew that the respondent's interest in the estate is less than that amount. But supposing the *onus probandi* to be on the respondent, then it is submitted that the revising barrister has found that he had a sufficient interest. The case states that "there was no charge upon the land operating in reduction of the annual value to the respondent, so as to affect his right to be registered." [*Maule* J. Can it be said, with this mortgage upon it, that the claimant has an interest in the land of the value of 40 shillings a year?] The stat. 8 *Hen.* 6. c. 7. requires that a freeholder shall have 40 shillings a year to "expend" out of the estate, which may well be the case, although 100*l.* is charged upon it. [*Maule* J.

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We cannot tell from the case whether the estate is charged for more than its value or not. The annual value only is found.] The respondent is in possession of the estate, and receives more than 40 shillings a year out of the rents and profits. He might have made, in perfect good faith, the declaration required by the stat. 28 Geo 3. c. 36. s. 6., that he really and truly had an estate of the clear yearly value of 40 shillings, over and above the interest of any money secured by mortgage upon the said estate. That was held in *Copland v. Bartlett* (a), to be the test of the freeholder's right to vote. [Maule J. The test should be applied in this way; that if the party could not take the oath he should have no vote, not that if he could take it, he should necessarily have a vote.] There is nothing said in the mortgage about interest, and as the respondent is in possession of the rents and profits of the estate, which are more than 40 shillings a year, it is submitted that the revising barrister has decided the question of value in favour of the claimant.

Corner, in reply. The respondent was bound to shew affirmatively that he had an estate of the required value on the first of *July* last. That, however, he has not done, for it was admitted that he had regularly paid 5*l.* yearly, which is found to be the whole annual value of the estate. It is contended, therefore, that it sufficiently appears from the statements in the case that the estate was worth nothing to the respondent; but if the Court should be of opinion that the question of value is left in doubt, the case may be remitted to

(a) *Antè*, p. 102.

the revising barrister to state what would be the value of the estate after payment of the 100*l.* charged upon it.

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JERVIS C. J. Upon consideration, it seems to me that it is not necessary to remit the case to the barrister for amendment; and that upon the facts already found our judgment should be against the respondent, on the ground that he has not a freehold estate of the annual value of 40 shillings, clear of all charges. He is in possession of freehold land of the value of 5*l.* a year, and the land has been mortgaged to secure the repayment of 100*l.* lent to the respondent, who has regularly paid interest on the loan at 5*l.* per cent. Nothing is said in the mortgage deed about interest, but the time fixed for the payment of the principal expired in *September* 1848. Now, whether this interest be a charge upon the estate or not, the principal sum of 100*l.* is charged generally upon it by way of mortgage. It might be doubtful, however, taking that point alone into consideration, whether the respondent had or had not an estate of the clear annual value of 40 shillings, and that view of the case would require that it should be proved, one way or the other, what the value of the estate was after that 100*l.* had been deducted. But according to the light in which I now look at the question before the Court, it seems to me that this would be unnecessary. It is clear from *Copland v. Bartlett* (a) that the payment of interest on a mortgage is to be considered as a deduction from the annual value of the estate. The question, therefore, is, how far does the

(a) *Antè*, p. 102.

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payment of interest here reduce that value? Popularly speaking, interest is usually paid, when there is a charge upon land, in consideration of the mortgagor remaining in possession, and we think we are justified in inferring, from the facts stated in the case, that an agreement was entered into between the parties that interest at 5*l.* per cent. should be paid on the loan, and that as long as the interest was regularly paid, the mortgagor should retain possession of the estate. Is not that within the express terms of the statutes of *Hen. 6.* and *Geo. 3.*? By the latter, the party is required to swear that his estate is of the clear yearly value of 40 shillings, over and above the interest on any money secured by mortgage on it. Now what interest has the claimant here over and above the interest of the money secured by mortgage? His mortgage by the deed is 100*l.*, and the interest upon it by the agreement is 5*l.* His real interest, therefore, in the estate is nothing, and we are bound to say that he has failed to establish that his interest is over and above 40 shillings a year, and, therefore, that he has not a freehold estate of the value of 40 shillings a year free of all charges. The decision of the revising barrister must be reversed.

MAULE J. I also am of opinion that the decision of the revising barrister must be reversed. In the construction of these cases, I think we are not to treat them as if they were pleadings subject to special demurrer, and require that every thing should be alleged with the correctness and precision required in such pleadings, but that it is sufficient if we put a reasonable construction on the facts as they are presented to us by the revising barristers. Applying this to the

present case, what has been found? It appears the respondent had borrowed 100*l.*, and had given a mortgage on his estate to secure it. The mortgage recites that the annual interest had been paid up to that time, and the case finds that the rate of interest paid was 5*l.* per cent.; and from this, I think, the Court is justified in inferring that there was a contract on the part of the respondent to pay interest at 5*l.* per cent. per annum, and that this is substantially a contract to pay 5*l.* per annum interest on money secured by mortgage on the land in question. There are several statutes on this subject. The 28 *G. 3. c. 36. s. 6.* enacted that at a county election the voter must take an oath "that he really and truly had an estate of the clear yearly value of 40 shillings, over and above the interest of any money secured by mortgage upon the said estate," &c.; "and that he is in the actual possession of the rents or profits of the said estate for his own use." Now this did not contain any restriction upon the right of voting given by any former act, but it was a condition expository of those acts; for if the right they conferred existed, the voter could take the oath; if not, he was not able to take it. The true sense of this declaration was, that he had an interest in land to the extent of 40 shillings a year after payment, not of all interest charged on that land, but after payment of "the interest of any money secured by mortgage upon the said estate." It seems to me from the rules of grammatical construction to be perfectly clear, that the thing secured is "money," and not "interest;" but if interest be made payable, whether by deed or otherwise, still it is above the interest so payable that the 40 shillings must be computed. That seems to me to be the literal construction

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of the words used by the legislature; but if that construction leads to absurdity or contradiction, or discrepancy, or inconvenience, we must look at the general spirit of the acts of parliament on the subject, and seek for a different construction. Now what is the spirit of the acts upon the subject? The statute of *Hen. 6.* provided that no person should vote who was not possessed of a certain power of expenditure, which at that time amounted to a considerable sum; but if we were to hold that such a person, having an estate worth 40 shillings a year, might mortgage it for its whole value, and because by a contract different from the mortgage contract he engaged to pay interest to the full amount of 40 shillings a year, he should nevertheless be treated as having an interest in land, from which he was able to expend 40 shillings a year, it would, I think, be contrary to the spirit of legislation on this subject. Such a person has no right to the land, except a right depending upon the will of a person who may turn him out whenever he pleases, and who probably will turn him out if he does not pay the interest he has contracted to pay, which is the full value of 40 shillings a year. Therefore both the letter and the spirit of the legislation on this subject shews that such a party is not a person on whom the legislature intended to confer the right of voting. I think, therefore, that in this case the claimant had not a sufficient interest in the land, and that his name should have been struck off the register.

WILLIAMS J. I am of the same opinion. I consider this an ingenious attempt to evade the construction put upon the act of parliament in *Copland v.*

Bartlett (a). The effect of the different statutes is to prevent the Court from taking a strict lawyer-like view of the position of mortgagor and mortgagee with reference to the word "charge" in the statute of *Hen. 6.*, and we are therefore compelled to regard the case in a popular aspect; and as the mortgagor is entitled to keep possession if he keeps down the interest, and the mortgagee cannot take possession if he happens to be paid the money, the interest on the mortgage debt becomes in this case a charge on the estate. It seems to me to be just the same, whether the interest be secured by the mortgage deed, or whether it is confined to the debt itself. In each case, the payment of the interest is an annual payment to induce the mortgagee to refrain from exercising his legal rights, and ejecting the mortgagor.

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TALFOURD J. I am of the same opinion. In this case the general facts found are that the party claiming is only to retain his possession of the land so long as he continues to pay its annual value to a person who has a charge to that amount upon it. I quite agree with my brother *Maule*, as to the species of discretion we are to apply to cases of this description, and that we should not look at them as special pleaders. I think this respondent had no beneficial interest which entitled him to vote, and that his vote should not be allowed.

Corner applied for costs, but the Court refused the application.

Decision reversed.

(*) *Antè*, p. 102.

CASES

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ARGUED AND DETERMINED

IN THE

COURT OF COMMON PLEAS,

UNDER THE STAT. 6 VICT. c. 18.

IN

MICHAELMAS TERM,

IN THE

FIFTEENTH YEAR OF THE REIGN OF VICTORIA.

November 13th. POWNALL, Appellant ; and HOOD, Respondent.

An extra or glut tide-waiter is an officer employed in levying or managing the customs, within the meaning of stat. 22 G. 3. c. 41. s. 1., and is therefore not entitled to a vote.

When the appellant appears, and the respondent does not, the Court will adhere to its former practice of hearing the appellant's case argued before it will reverse the decision of the revising barrister.

UPON an appeal from the decision of the revising barrister for the borough of *Harwich*, the following case was stated by him for the opinion of the Court :

An objection was duly taken by *Edward Pownall* to the name of *William Hood* being retained on the list of persons entitled to vote for the borough, on the ground that he had, during the qualifying year, been and still was one of the class of persons commonly called extra or glut tide-waiters, and as such disqualified from so voting by virtue of the statute 22 Geo. 3. c. 41.

It appeared that ordinary tide-waiters are officers

the appellant's case argued before it will reverse the decision of the revising barrister.

appointed directly by the Lords Commissioners of Her Majesty's Treasury; and that their duty is to board vessels entering the port, for the purpose of watching and taking charge of the cargoes until they can be examined by the proper officers of the Customs; but there being sometimes a glut of business of that description, owing to the arrival of a great number of vessels at once, the collector of Customs (who is himself an officer appointed by the Lords of the Treasury, on the selection and recommendation of the Board of Customs) is empowered, by a general authority from the said Board, to keep a list of persons, who are to be ready to act as occasional or extra tide-waiters whenever the business of that department may be in excess, and who are for that reason called extra or glut tide-waiters. These persons are selected and nominated by the collector of Customs, by virtue of the aforesaid general authority, at his own sole discretion, and their appointment is confirmed by the Board of Customs as a matter of course. When appointed and placed upon the said list, they are liable to be called upon to act as tide-waiters whenever there may be occasion for their services, being paid by the job, according to a certain rate of remuneration, by the collector of Customs, who makes a monthly report of such payments and of the work in respect of which they were made, to the Revenue Department. The extra tide-waiters make, once for all, the same declaration of office that is made by all other officers of the Customs on their appointment; and when once placed upon the said list they remain there until they resign, or decline to act when called upon, or are discharged for misconduct.

The said *William Hood* was placed upon the said list

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1851. in *November* 1849, and has ever since remained thereon,

POWELL and has been repeatedly employed as an extra tide-
v. waiter during the last twelve months. The only ob-
HOOD. jection to him was that above mentioned. Being of
opinion that the said *William Hood* was not, under the
circumstances above stated, incapacitated from voting
in the election of members to serve in parliament, I
overruled the objection, and retained his name upon
the list of voters.

No counsel appeared for the respondent.

Kinglake, Serjt., who appeared for the appellant,
proved service of notice on the respondent, as required
by the 64th section of the Registration of Voters Act,
of the appellant's intention to prosecute the appeal, and
was proceeding to argue the case, when

JERVIS C. J. said, Are you not entitled to judgment
without argument? The Master tells us that such is
the practice, when the respondent does not appear to
support the decision.

Kinglake, Serjt. That rule was acted upon in *Powell*
v. *Caswell* (a), but the attention of the Court was not
then directed to the previous authorities, which are
collected in a note (b) to that case, and which were
supposed to have settled the practice the other way.
In *Cooper v. Harris* (*Austin's case*) (c), which was the
first case in which the point appears to have been
mooted, *Tindal* C. J. assigned this reason for the rule
then laid down by the Court, viz. that the appeal might

(a) *Antè*, p. 141.

(b) *Antè*, p. 142.

(c) *Antè*, Vol. I. p. 208.

turn out so weak a case that the respondent might not think it worth while to appear by counsel in support of the barrister's decision. And a still stronger reason is afforded by the language of the 66th section of the stat. 6 *Vict. c. 18.*, which makes the decision of the Court final upon the point of law adjudicated upon, and binding upon committees of the House of Commons. [*Maule J.* The 64th section provides that no appeal shall be heard by the Court in any case whereon the respondent shall not appear, *unless* the appellant shall prove that due notice of his intention to prosecute such appeal was given to the respondent. That seems to lead to the inference that upon proof of such due notice the appeal is to be heard.]

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JERVIS C. J. No decision would be pronounced on the merits of the case by giving judgment in favor of the party who appears, as the other must be taken to have retired from the contest. It does not seem right that we should bind the House of Commons by a decision, delivered after hearing the arguments on one side only. At all events, it is a very unsatisfactory way of doing business, but that we cannot help. We will hear the appellants' counsel.

Kinglake. The question is, whether on the 31st day of *July* last the respondent was affected by any legal incapacity to vote, because if so, the barrister was wrong in placing his name on the register. No reasonable doubt can be entertained that *Hood* came within the exact meaning of the provisions contained in the stat. 22 *Geo. 3. c. 41. s. 1.* That section enacts that "no commissioner, collector, comptroller, searcher, or other

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officer or person whatsoever concerned or employed in the charging, collecting, levying, or managing the customs, or any branch or part thereof &c., shall be capable of giving his vote for the election of any knight of the shire, commissioner, citizen, burgess, or baron to serve in parliament." The general words here used, "or other officer or person whatsoever," embrace, as widely as words can do, any officer employed by the Customs. The act was passed "for the better securing the freedom of elections of members to serve in parliament," and to prevent the exercise of government influence. The respondent is a person peculiarly liable to be affected by the influence of the Government. The case itself finds that ordinary tide-waiters are officers appointed to watch and take charge of cargoes until they can be examined by the proper officers of the Customs. They are, therefore, persons employed in levying the Customs. And the only difference between an ordinary tide-waiter and an extra tide-waiter is this, that the former is constantly employed, and the latter only by the job. [*Talfourd J.* He has a general retainer from the Board of Customs.] In *Harris Fudger's case* (a), it is true, the vote of an occasional tide-waiter was held to be good by the *Kinsale* Committee. [*Maule J.* If I were informed that a man was an occasional tide-waiter, I should infer that he was only occasionally employed in that capacity. The committee were not told in that case, as we are here, that the party was liable to be called upon to act whenever there might be occasion for his services.] It is found by the case that the respondent had made the declara-

(a) *Falc. & Fitz.* 353.

tion required by the stat. 8 & 9 *Vict. c. 85. s. 10.*, from all persons holding office under the Customs, including not merely those who are paid by salaries, but by those who are paid under any special order of the Commissioners of the Treasury or the Customs. The extra tide-waiters make this declaration, once for all, upon their appointment, and when once placed upon the list, they remain there until they resign, or decline to act when called upon, or are discharged for misconduct. [*Talfourd J.* According to the finding, they hold their office during good behaviour.] In *Cooper v. Harris* (Austin's Case), (a), this Court decided that a person employed under the Post Office, to carry letters and receive the postage thereon, at any time within twelve calendar months of the last day of *July*, was disqualified by the language of the section now under consideration. And in *The King v. Salisbury* (b), it was held by *Patteson J.*, that a person employed by a post-mistress to carry letters, at a weekly salary paid by her, but which was repaid to her by the Post Office, was a person employed by the Post Office, within the stat. 52 *Geo. 3. c. 143. s. 2.* [*Talfourd J.* I think the guard of a mail coach has been held not to be disqualified.] (c). There are decisions of election committees on both sides of the question.

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JERVIS C. J. I am of opinion that the decision of the revising barrister must be reversed. There is no doubt whatever that a glut tide-waiter is within the mischief contemplated by this act of parliament, because he is directly under the influence of the Government which

(a) *Antè*, Vol. I. p. 207.(b) 5 *C. & P.* 155.(c) See the *Cirencester Case* (vote of *Samuel Morris*), 2 *Fraser*, 454.

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appoints him. But that would not be sufficient to work a disqualification, unless he also came within the words of the act. I think, however, the facts stated in the case shew that he is an officer employed in levying or managing the customs within the meaning of the act of parliament. A regular tide-waiter is employed more constantly than an extra tide-waiter; but in what other respect does the employment of the latter differ from that of the former officer? The case finds that when the extra tide-waiters are appointed and placed upon the list, they are liable to be called upon to act as tide-waiters whenever there may be occasion for their services, and that they are paid by the job. They are bound to obey the call, and to leave any other business which they may have in hand at the time. The employment of the tide-waiter, therefore, differs from that of the glut tide-waiter in this respect only, that he is more constantly employed and paid regularly. For these reasons I think that the case is within the mischief, and also within the letter of the act of parliament; that the respondent is consequently disqualified to vote, and that his name must be removed from the register.

MAULE J. I also think that a glut tide-waiter is an officer employed in the collection of customs. He must always be at his post, and be ready to act when called upon. The only distinction between him and a regular tide-waiter is, that the measure of his payment is the work which he does. He comes, therefore, very clearly within the definition of an officer employed in levying or managing the customs. As to his being within the mischief of the act, he is perhaps more peculiarly

within the mischief intended to be provided against than any body else. As he is placed on a list of persons who may be called upon to work or not, and he is only paid according to the work done, he is completely under the control of his superiors, and if he should be guilty of any political insubordination, and not prove a thorough-going partisan, they might keep him out of employment altogether. I think, therefore, that the respondent has exercised a sound discretion in not appearing to support the decision, which ought to be reversed.

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WILLIAMS J. and TALFOURD J. concurred.

Decision reversed.

POWNALL, Appellant; and DAWSON, Respondent. *November 13.*

THIS was also an appeal from the decision of the revising barrister for the borough of *Harwich*, who stated the following case:—

An objection was duly taken by *Edward Pownall* to the name of *Daniel Dawson* being retained on the list of persons entitled to vote for the borough, in respect of the occupation of property within the parish of *St. Nicholas*, the name of the said *Daniel Dawson* being thus entered on the said list: first column, "Name, *Daniel Dawson*;" second, "Residence, *West Street*;"

A party claiming the right to vote for a borough, occupied under one landlord a two-stalled stable, with hay-loft over it, built of brick; annexed to which, but of a lower elevation, was another brick building, to which again was annexed an irregular wooden build-

ing, divided into three compartments. Each of these compartments, as well as each of the two brick buildings, opened into the same yard, but there was no internal communication between any of these buildings. *Held*, that the premises formed one continuous structure, under the same roof, and therefore constituted a "building" within the meaning of 2 Will. 4. c. 45. s. 27.

1851. third, "Qualification, workshop, stable, and garden;"

POWELL fourth, "Situation of property, outpart westward."

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The ground of the said objection was, that the "stable" and "workshop" were not so situated with respect to each other that they could be united so as to form a qualification, or part of a qualification.

The premises described in the third column of the above entry, consisted of a two-stalled stable, with hay-loft over it, built of brick, annexed to which, but of a lower elevation, was another brick building, to which again was annexed an irregular wooden building, divided into three compartments. Each of these compartments, as well as each of the two brick buildings, had a door in front opening into a yard, one side of which was bounded by this row of buildings, and the opposite side by a high wall in which was a door opening into the garden, which was also completely surrounded by a high brick wall. The end of the yard fronting the street was enclosed by folding wooden gates, and the opposite end by a high blank wall. The voter was a wheelwright and coach-builder by trade, and used all the buildings above mentioned for the purposes of his said trade, which he carried on there. He had never used the stable as such, but always as a painting shop. The adjoining brick building he had used as his carpentering shop, and the several compartments of the wooden building as places of deposit for the rough materials of his trade, and as stands for gigs and other carriages of his construction or which were left with him for repair. The three buildings, or portions of building above mentioned, were closely annexed to each other, but there was no internal communication between any of them, except a door between

the two compartments of the wooden building which were used as stands for carriages. The whole of the premises were occupied by the voter under one landlord, and at a yearly rent of 10*l.*, which was admitted to be the clear yearly value of them, and the only ground of objection to him was that above mentioned.

Being of opinion that the common purpose for which the whole row of buildings was used and its complete enclosure in the yards gave it the character of a single building, I disallowed the objection, and retained the name of *Daniel Dawson* on the list.

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Kinglake, Serjt., for the appellant. It is submitted that the premises described in the case were not so united as to form one entire building, within the meaning of the 27th section of the Reform Act. The substance of the decisions may be said to be this, that two buildings cannot be annexed together for the purpose of conferring the franchise. It has been decided that rooms or floors of an entire structure may qualify a party to vote; but the principle which pervades both classes of cases is, that the "building," whether it be the whole or the part of a structure, must be under one roof. *Dewhurst v. Fielden* (a) is an authority for the proposition that a claimant cannot join together two separate buildings in order to make up the value required to confer a vote for a city or borough. [*Maule J.* In that case the buildings were 300 yards apart, and no question of continuity could have arisen.] The decision of the revising barrister seems to have been founded upon *Powell v. Price* (b), but none of the

(a) *Antè*, Vol. I. p. 274.(b) *Antè*, Vol. I. p. 586.

1851. buildings described in the case is a house, and therefore the law of curtilage does not apply. [*Jervis* C. J. It does not follow that circumstances may not make the three workshops one workshop.] The buildings are not under one roof. [*Maule* J. Do you mean by "under one roof" a roof of the same height? In that sense the Great Exhibition is not a building, because its roof is of different elevations.] If there were an internal communication, that would make the buildings under one roof, and so constitute one building. [*Jervis* C. J. Would not an external communication be sufficient?] It is submitted that it would not. In *Wright v. The Town Clerk of Stockport* (a) the approach to the several rooms in the factory, which were held to be separate buildings, was from the outside; but it was conceded that the rooms were all under one roof. [*Maule* J. That was a question of separation; this is a question of aggregation. *Jervis* C. J. If you were to build a house on the top of an arch, would that be a building? There can be no doubt of it. Then suppose you fit up the arch below as stores or apartments, would not the whole building be under one roof?] In *Jolliffe v. Rice* (a) the judgment of *Wilde* C. J. proceeded upon the ground that the coach-house and stable described in that case had a common roof, and that there was a communication between them by means of windows. [*Maule* J. Are not the round tower of *Windsor* and the adjoining apartments under the same roof? *Jervis* C. J. "Under the same roof" means, that there shall be no other house intervening.] It is submitted that there must at least be continuity.

(a) *Antè*, p. 92.

JERVIS C. J. It seems to me that in this case, as in the last, there is really no question upon which the Court has to deliberate. My brother *Kinglake* has very properly brought before us all the cases bearing upon the point at issue; which, however, when examined, are found to be very much against the appellant. I think that these premises are all buildings under one roof, that is to say, a roof without any break, and therefore I am of opinion that they form one building withing the meaning of the act of parliament.

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MAULE J. I think that the respondent acquired a vote by occupying a building worth 10*l.* a year. The subject-matter of the occupation is an aggregation of workshops, though one of them takes the form of a stable, and they are occupied by one man for the purposes of one business. They are not separated from, but are annexed to each other; and when the term "building" is used, you are released from all questions which might arise upon the words "house" and "curtilage." All you want is unity, which may exist either where there is more or less than one building. Two or three different buildings will not confer a vote, but I do not think that the premises in this case are two or three buildings, because the place is occupied by one man for one purpose, and there is one continuous structure, under one roof. The cases cited during the argument very clearly establish that a part of a house, or of any other building whatever, if occupied by a person separately, although other persons have a separate occupation of other parts of it, is a building within the meaning of the act. But it seems to me that if a man occupies two floors in a house, and his

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occupation is distinct, he occupies one building. That, however, is not material to the consideration of the present case, where the question is not whether the premises are parts of one building, but whether the structure consists of one or several buildings. For the reasons which I have stated, I think that it is one building, and therefore that the decision was right.

WILLIAMS J. and TALFOURD J. concurred.

Decision affirmed.

November 13th. JARVIS, Appellant; and the Town Clerk of SHREWSBURY, Respondent.

The Court, on the motion of the appellant's counsel, reversed the revising barrister's decision, without argument, the respondent's counsel stating that he could not support the decision.

WHATELEY appeared for the appellant in this appeal, and *Selfe* for the respondent, and upon motion made by the former to reverse the decision of the revising barrister, *Selfe* stating that he could not support it, the decision was, without argument,

Reversed (a).

(a) This case affords the first example, since the Court obtained jurisdiction over registration appeals, of the reversal without argument, of the barrister's decision. This decision has been invariably affirmed, without argument, whenever the Appellant has not appeared by counsel. (See *Bage v. Perkins*, antè, Vol. I. p. 255.; *Crocker v. The Overseers of St. Mary, Lambeth*, Ibid.; *White v. Pring*, antè, p. 141.) Pro-

bably the Court, in affirming, without argument, the decision of the barrister, when no one appeared to impugn it, were influenced by the consideration that the rule *omnia præsumuntur rite esse acta*, applies quite as strongly to judicial as to other officers. And we have seen (*Pownall v. Hood*, antè, p. 170.) that the appellant's case must be argued, when the respondent does not appear, before the decision of the bar-

risters can be reversed. Does the appearance of the respondent by counsel change the character of the decision? If not, the presumption in favour of its correctness would seem still to apply. The admissions of counsel are binding in civil actions, because they represent in Court the parties to the suit, but in a registration appeal much wider interests are involved than those of the nominal parties. Official respondents especially may have (and frequently have) no interest whatever in a decision by which the electoral privileges of a whole constituency are deeply and directly affected.

The effect of the judgment of the Court in this case may be open to some doubt. All that can be affirmed with certainty is, that the name of the party objected to before the barrister has been erased from,

or restored to the register, contrary to his decision. It is not easy to discover how the judgment can be "final and conclusive upon the point of law adjudicated upon" (stat. 6 Vict. c. 18. s. 66.) because a committee of the House of Commons can hardly be bound by a decision of the nature of which they must be utterly ignorant. Revising barristers in general, for a similar reason, cannot be expected to decide in conformity with the adjudication, if they should happen, unwittingly, to take a different view of the point of law decided, and it is even possible that the barrister whose decision was so unceremoniously overruled may consider the judgment more the act of the respondent's counsel than that of the Court, and decide on a future occasion the legal question in the same manner as before.

1851.

JARVIS
v.
The Town
Clerk of
SHREWSBURY.

EADEN, Appellant; and COOPER, Respondent. *November 13th.*

AT a Court held before the revising barrister for the borough of *Cambridge*, *John Rolfe Mann*, residing at *St. Andrew's Hill*, claimed to vote for a house situate at *St. Andrew's Hill*; but it being proved that the qualification depended on the successive occupation of two houses, namely, a house No. 15 *Hill's Road*, in the parish of *St. Andrew the Less*, and the said house

If a notice of claim contains an inaccurate description of a party's qualification, the revising barrister should consider, in dealing with the claim under the 38th section of the

Registration of

Voters Act, whether the mistake ought to have been corrected under the 40th section, supposing it to have occurred in the list of Voters; and if so, he ought not to amend the claim, but decide that due notice of it has been proved to have been given.

1851.

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COOPER.

on *St. Andrew's Hill*, in the parish of *St. Andrew the Great*, the revising barrister allowed the objection, and expunged the name. The claimant then proved due service of a notice of claim upon the overseers of the parish of *St. Andrew the Great* in respect of a house situate at *St. Andrew's Hill*, "in successive occupation of and from a house, No. 15 *Hill's Road*," and it was also proved that the house No. 15 *Hill's Road* was in the parish of *St. Andrew the Less*, and that the street called *Hill's Road* ran into two different parishes; namely, *St. Andrew the Great* and *St. Andrew the Less*. The appellant thereupon objected that the notice of claim was upon the face of it for two houses in the same parish, and was on that ground a bad claim for a qualification consisting of the occupation of two houses in different parishes, and that the claimant could not give evidence of any other qualification than that which was described in the claim, and that the description could not be changed by adding the name of the true parish to the house of No. 15 *Hill's Road*. The revising barrister decided that the notice of claim was insufficient as it stood, but held that he might amend the claim by adding to the description of the house the parish in which it was situate, and thereby enable the claimant to give evidence in support of successive occupations in the two parishes; and as the vote was proved in other respects, he inserted the name of the claimant in the list of voters in the parish of *St. Andrew the Great*.

The question stated for the opinion of the Court was, whether he had power to amend the claim; and whether he had power, under the circumstances, to receive evidence of a qualification consisting of the

successive occupation of two houses in different parishes.

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Couch for the appellant. Two questions have been stated by the revising barrister for the opinion of the Court, but it is apprehended that the material one for consideration is, whether he had power to amend the claim. He has decided that the notice of claim was insufficient, as it originally stood; and if he had no power to amend, it follows that he was not empowered to receive evidence in support of the claim as amended. [*Jervis* C. J. As I read the second question, he leaves it to the Court to say whether, under the circumstances, he had power to receive evidence of a successive occupation under the original claim.] The revising barrister for a borough has no power to amend a claim at all. The 40th section of the stat. 6 *Vict.* c. 18., which confers upon him large powers of amendment, confines the corrections to mistakes made in the list of voters. [*Jervis* C. J. referred to *Wood v. The Overseers of Willesden* (a).] The Court there held that it was a question of fact for the determination of the barrister, whether the qualifying property was sufficiently described for the purpose of identifying it; but the point upon which the decision turned was, whether that description appeared on the face of the list of voters, which, in the case of a county, is made up of a copy of the old register, and the list of new claims; stat. 6 *Vict.* c. 18. s. 6. By the 37th section of the act it is provided that the barrister shall have power to insert in the county list the names of claimants omitted

(a) *Antè*, Vol. I. p. 314.

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by the overseers, but no corresponding provision is made by the 15th section, which directs what is to be done when persons have been omitted from the borough lists who are entitled to vote. They are directed to give notice of their claims to the overseers, who are required to make up those claims into a separate list, according to a form given in schedule (B). It follows that the barrister is not authorised, under the 40th section, to amend any mistake in a *claim*. In counties there is but one list of voters; in many cities and boroughs there are two, besides a list of claims. [*Jervis C. J.* In *Luckett v. Knowles* (a) the Court held that the barrister might amend, under the 40th section, an erroneous statement of a person's place of abode in a borough list of voters.] The place of abode of a voter is no part of his qualification. [*Maule J.* The question seems to be, whether the party objected to gave due notice of his claim.] The 40th section provides that, "whether any person shall be objected to or not, no evidence shall be given of any other qualification than that which is described in the list of voters, or claim, as the case may be." The point which arises in this case was mooted, but not decided, in *Hitchins v. Brown* (b), and *Flounders v. Donner* (c). [*Jervis C. J.* In *Hitchins v. Brown* the Court did not decide the point, but *Coltman J.* expressed an opinion that the barrister was authorised, by the 40th section, to amend a claim, observing (d), "This appears to me to be precisely the sort of case contemplated by that section, which in express terms empowers the barrister to

(a) Antè, Vol. I. p. 451.

(b) Antè, Vol. I. p. 328.

(c) Id. p. 365.

(d) Antè, Vol. I. p. 333.

change the description of the qualification as it appears in the list, when the alteration is made 'for the purpose of more clearly and accurately defining the same.'" [Maule J. By the 38th section the barrister is required to insert, in the borough list of voters, the name of every person omitted who shall be proved to his satisfaction to have given due notice of his claim to be inserted in such list, and to have been entitled, on the last day of *July*, to have his name inserted in the list in respect of the qualification described in such notice of claim. All that the barrister has to do is to inquire whether the claimant has given due notice, and for that purpose he can only look at the notice which has been given. What is the use, then, of amending the claim? If it contains a description of his qualification, which is not perfectly accurate, the barrister has to consider whether the description given amounts to due notice. That may depend, perhaps, on local circumstances; but when he finds that the terms of the notice are such that, if the mis-description had occurred in the list of voters, he might and would have amended it, that, I think, affords a strong argument for saying that the notice has been made out to his satisfaction.] The barrister says here that the notice of claim was insufficient; and that he amended it, "and *thereby* enabled the claimant to give evidence of successive occupation."

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Wheeler, who appeared for the respondent, was not called upon.

JERVIS C. J. As I understand the case, the revising barrister seems to think that, as a matter of law, he was

1851. precluded from considering the circumstances under which the notice of claim was given. If so, he was wrong, because he had power to do so.

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MAULE J. If the topography of a place be such that any body can understand where to find it by such a description as "*15 Hill's Road*," the barrister would do right in allowing the claim. Possibly the appellant may have a right to have the case sent back to be re-stated (a); but upon the whole, there seems to have been a compensation of errors. No one probably could be misled by the notice, though it was defective; and the barrister, though formally wrong, is substantially right.

WILLIAMS J. and TALFOURD J. concurred.

Decision affirmed.

(a) This right was waived by the appellant's counsel.

SHEDDEN, Appellant; and BUTT, Respondent.

November 13th.

If one party to an appeal neglects to deliver his paper-books, the other must do so for him, or when the case is reached, it will be struck out of the list.

IN this appeal paper books had been delivered to the Chief Justice and senior puisne judge only, and when the case was reached, the Court ordered the master to strike it out of the list.

Poulden, for the appellant, prayed for further time to deliver paper books to the other two judges, and referred to *Newton v. the Overseers of Mobberley*. (a)

(a) *Antè*, Vol. I. p. 335.

JERVIS C. J. That case is no authority for looking over the non-delivery of paper-books. 1851.

Appeal struck out. (a) SHEDDEN v. BUTT.

(a) In *Allan v. Waterhouse* ent had omitted to deliver all the paper-books ; and the case was subsequently argued. Court allowed an appeal to stand over when the Respond-

BEAMISH, Appellant; and the Overseers of Stoke, Respondents. November 13th.

AT a Court held at *Coventry* for the revision of the list of voters for the parish of *Stoke*, in the northern division of the county of *Warwick*, before *George Boden*, Esq., revising barrister for the said division, *John Benbone Hebbert* objected to the name of *Josiah Smith Beamish* being retained upon the list of voters for the said parish of *Stoke*, in respect of property situate in the same parish. The barrister struck out the name of the party objected to, subject to the opinion of the Court on the following case :

The claimant, *Josiah Smith Beamish*, is a member of the *Coventry and Warwickshire Benefit Building and Investment Society* (established under the provisions of

A holder of three shares in a building society, purchased freehold land of the yearly value of 6*l.*, and mortgaged it to the trustees of the society for the amount of the purchase money, which they had advanced to him, as well as to secure 5*l.* per cent. interest upon the purchase money, and such sum, not exceeding 2*s.* 6*d.* per share per

annum, for incidental expenses as the Committee should fix. In the mortgage a power of sale was reserved to the trustees, in case of neglect or refusal on the part of the mortgagor to observe any of the regulations of the society. By one of the society's rules he was bound to (and he did duly) pay 1*s.* 6*d.* weekly for each share which he held, amounting to 1*l.* 14*s.* per annum, and out of this sum there was appropriated in his accounts with the society 8*l.* 18*s.* in part liquidation of the principal, 2*l.* 10*s.* for interest, and 6*s.* for incidental expenses.

Held, that although the mortgagor was in actual possession of the rents and profits, he was not entitled to vote at the election of a knight of the shire by virtue of stat. 6 *Vict.* c. 18. s. 74 ; the whole amount of the annual payment of 1*l.* 14*s.* being a charge upon the land within the meaning of stat. 8 *Hen.* 6. c. 7., and his estate being consequently of less value than 40*s.* by the year.

1851.

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Stoke.

the Act 6 & 7 *Will. 4. c. 32.*), in which he held three shares. A copy of the rules of the society, as certified and allowed by the barrister, is appended to, and they are to form part of this case. Rules 5 and 7 of the society require each member to pay 1s. 6d. weekly for every share he may hold; and Rule 12 provides "That all members upon receiving the amount advanced, shall execute to the trustees for the time being a legal mortgage of the property offered as a security, to secure to them the sum he may be indebted to the said society, with a premium for prior advances equal to 5% per cent. per annum, upon the amount of advance until repaid, and such sum, not exceeding 2s. 6d. per share per annum, for incidental expenses as the committee shall fix," in which mortgage power is to be reserved for the trustees, "in case the member taking the same (advance) shall at any time thereafter fail, neglect, or refuse for twenty-six weekly meetings to pay, observe, and perform all or any of the subscriptions, payments, covenants, and agreements, and regulations on his part respectively to be paid, observed, and performed," to receive the rents of the premises, and sell the same as therein mentioned; and also retain "to themselves, on account of the society, the full amount of all and every subscriptions and premium which would, according to the rules and regulations for the time being of the society, have thereafter become payable by such member, as if the same were then in arrear." It also provides "that if any member shall be desirous of redeeming his security, the committee shall settle the terms (according to the particular circumstances of each case) on which the member shall be allowed to redeem; and upon

compliance with such terms, &c., the deeds are to be given up, and a receipt endorsed.

1851.

On the 19th *October*, 1850, the claimant became the purchaser in fee simple of a piece of building land in *Avon Street* in the said parish of *Stoke*, of the annual value of 6*l.*, and received a conveyance, and entered into possession thereof accordingly, and on the 20th *October* executed a mortgage thereof to the trustees of the said society, a copy of which is appended to and is to form part of this case. At the date of the mortgage, the society had advanced to the claimant the sum of 84*l.* 14*s.* 0*d.* which sum was made up as follows:—

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Stoke.

	£	s.	d.
Purchase money of land	-	-	71 11 3
Legal expenses	-	-	4 1 6
Incidental expenses at 2 <i>s.</i> per share, or 6 <i>s.</i> per annum	-	-	1 19 0
Premium at the rate of 5 <i>l.</i> per cent. interest on the balance of 55 <i>l.</i> 15 <i>s.</i> 3 <i>d.</i> then unpaid on three shares, until the same would be paid by the weekly payment of 1 <i>s.</i> 6 <i>d.</i> per share, or 4 <i>s.</i> 6 <i>d.</i> per week	-	-	7 2 3
			<hr/> £ 84 14 0 <hr/>

This mortgage is still unsatisfied, but the ordinary contributions of 1*s.* 6*d.* per share, or 4*s.* 6*d.* weekly (required to be paid by the claimant agreeably to the proviso in the mortgage deed, and the rules of the society, on account of both principal and interest) amount to the sum of 11*l.* 14*s.* 0*d.* per annum. No default has been made in payment of the contributions;

1851. and the claimant has always been, and is now, in the actual possession of the property.

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It was proved that on the 3rd *January* 1851, the sum then remaining unpaid and actually due to the society from the claimant in accordance with the rules thereof, was 47*l.* 10*s.* 3*d.*; and that since that time on receipt of the ordinary contributions to the society by the secretary, they had been appropriated by him from time to time, in his accounts with the claimant, in the following proportions and manner, viz., 8*l.* 18*s.* in part liquidation of the principal of the mortgage debt, 6*s.* for incidental expenses (being the expenses of working the society), and 2*l.* 10*s.* for premium on interest, such premium or interest being calculated on the amount of principal money then remaining unpaid to the society.

For the claimant it was contended that the contributions of 4*s.* 6*d.* weekly for the three shares ought not to be deducted from the annual value of the qualification, but only so much thereof, viz. 2*l.* 16*s.* per annum, as was charged for incidental expenses and interest on the said principal sum of 47*l.* 10*s.* 3*d.* due on the 30th *January* last, and on payment of which on that day the trustees must have endorsed a receipt on the mortgage deed, pursuant to the fifth section of the above-mentioned act and the twelfth rule of the society, which would leave 3*l.* 4*s.* as the annual value of the claimant's interest in the property, and that the rest of the contributions must be taken to be and were specific repayments of the principal money remaining due on the mortgage.

On the part of the objector it was contended that the arrangement between the claimant and the building society is in substance and effect a mortgage whereby

the amount advanced and the interest were secured and made payable by weekly instalments or "contributions," and that such "contributions" were in law as well as in fact an annual charge "upon the estate beyond its annual value," thereby reducing the present interest of the claimant therein to less than the value of 40s. by the year above all charges.

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The barrister was of opinion that the weekly payment of 4s. 6d. for which the claimant was liable under the rules of the Society, and which was secured by the mortgage, was a charge upon the estate, and should be deducted from the annual value thereof, and that such deduction reduced the annual value of the estate below 40s.

If the Court of Common Pleas should be of opinion that only so much of the said weekly payment of 4s. 6d. as was payable in respect of interest, namely, amounting to the sum of 2l. 16s. per annum, ought to be deducted from the annual value of the claimant's property, then the claimant's name was to be restored to the list of voters; if otherwise, his name was to remain erased.

D. D. Keane (*Lutwyche* with him), for the appellant. The annual value of the claimant's interest in the property was 3l. 4s., and therefore the revising barrister was wrong in erasing his name from the list of voters. By the stat. 6 *Vict. c. 18. s. 74.* the mortgagor in possession of the rents and profits is entitled to vote, if the annual value of the premises be sufficient, which is required by the stat. 8 *Hen. 6. c. 7.* to be 40s. by the year at least "above all charges." The words in the original French are "*outré les reprises.*" The word "reprise" means "a deduction from the profits;"

1851. *Termes de la Ley; Jacob's Law Dictionary (Reprise).*

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SOME.

It is a taking back of that which issues from the land, and a deprivation *pro tanto* of the enjoyment of it. In the present case, it includes the interest and incidental expenses accruing due on the unpaid balance of the mortgage money; the payment of 4s. 6d. weekly is an outgoing which augments the quantity of the claimant's estate. [*Jervis C. J.* He has to pay 11*l.* 14s. yearly, and the annual value of the land is only 6*l.* *Macle J.* The statute of *Hen. 6.* refers to persons who may "expend" 40s. by the year. How can this person expend that sum?] The word "expend" is limited by the words which follow "as afore is said," implying 40s. above all charges. In addition to 2*l.* 16s. charged upon the premises for interest and incidental expenses, he expends 3*l.* 4s. out of his land in reducing the principal sum, thereby enlarging the quantity of his interest. [*Macle J.* The true test of value is, whether a tenant would take the land from year to year, pay all the charges, and give the claimant 40s. a-year besides. It seems to me that this is very like the case of *Lee v. Hutchinson (a)*.] The decision in that case proceeded upon the stat. 28 *Geo. 3. c. 36. s. 6.* containing the freeholder's oath; but, as appears from the *Commons' Journals* (1789), so vast a number of petitions were poured in against the act, that the Legislature was constrained to repeal it immediately by the stat. 29 *Geo. 3. c. 18.* [*Jervis C. J.* The decision of the Court was not founded upon the stat. 28 *Geo. 3. c. 36. s. 6.*; it was only said that the freeholder's oath therein contained was a good key to the exposition of the stat. 8 *Hen. 6.*

(a) *Anti*, p. 159.

c. 7.] No weight can justly be due to an exposition which has been swept away by the act of the legislature itself. [*Maule J.* The stat. 28 *Geo.* 3. was not passed to remove doubts arising out of the stat. 8 *Hen.* 6. c. 7.] It is submitted that the act 28 *Geo.* 3. is no key to the meaning of the stat. 8 *Hen.* 6., not only upon the ground that the former act has been repealed, but because it is clear the words contained in the freeholder's oath were repealed advisedly. Those words are larger than the terms used in the act 7 & 8 *Will.* 3. c. 25., and the act 6 *Geo.* 2. c. 23. All that has been decided by *Copland v. Bartlett* (a) and *Lee v. Hutchinson* (b) is, that the interest due on a mortgage is a charge on the freehold. In the former case, it was held that payments made by a member of a building society, in discharge of the sums monthly accruing due on his shares, were such a charge; but it did not appear what proportion of the amount paid was paid as interest, and what proportion was paid in reduction of the principal sum secured by the mortgage. In the absence of evidence, therefore, to the contrary, the Court assumed that the whole amount of the payments was a charge upon the land. Here the amount payable for interest and incidental expenses is ascertained to be 2*l.* 16*s.* per annum, leaving the mortgagor in possession of the rents and profits of the land to the extent of 3*l.* 4*s.* above all charges.

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E. Beavan for the respondents. The annual value of the land to the claimant is nothing. In the argument for the appellant the quantity of his interest in the

(a) *Antè*, p. 102.(b) *Antè*, p. 159.

1851. premises has been confounded with their value. The principle of *Lee v. Hutchinson* (a) is strictly applicable, for the claimant is compelled to pay 11*l.* 14*s.* annually as the consideration for retaining possession of land which is only worth 6*l.*

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Keane replied.

JERVIS C. J. I think that this case is governed by *Lee v. Hutchinson* (a), following out the rule laid down in *Copland v. Bartlett* (b). The true mode of dealing with these cases is not to enter into minute refinements for the sake of discovering a way in which the plain provisions of a statute may be evaded, but to look at the real value of the estate to the claimant. The estate is worth 6*l.* a year, but the appellant pays in respect of it, for interest, expenses, and instalments towards the discharge of the principal money due, 11*l.* 14*s.* The annual amount of the rents and profits, therefore, is a *minus* quantity. At present the estate is worth nothing per annum to the claimant. If he were to go on paying this sum for four years, and at the end of that time were to commit a forfeiture by a breach of any of the conditions of the mortgage, he would then lose his estate altogether; and yet, if he is now entitled to a vote, he might go on voting during the whole of those four years in respect of a qualification which would then turn out to have been no qualification at all. It seems to me that this is an attempt to evade the plain meaning of the stat. 8 *Hen.* 6. c. 7., and that the respondents are entitled to our judgment.

(a) *Antè*, p. 159.

(b) *Antè*, p. 102.

MAULE J. If the Court were to decide in the appellant's favour, we should be obliged to hold that, if a man bought land for more than its value, and covenanted to charge the purchase-money on the estate with interest, he would be entitled to a vote, although he derived no profit from the land. I think this case comes substantially within the principle of *Lee v. Hutchinson*.

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Stoke.

WILLIAMS J. The argument for the appellant impliedly admits that we must dismiss the appeal if we adhere to our former decisions, and I see no reason to depart from them.

TALFOURD J. concurred.

Decision affirmed, with costs.

BURTON, Appellant; and BROOKS, Respondent.

November 19th.

BURTON, Appellant; and BLAKE, Respondent.

THESE were appeals from the decision of the revising barrister for the southern division of the county of *Northampton*.

If the case transmitted by the appellant to the Master does not contain the revising barrister's

signature at the end of it, the Court cannot hear the appeal, unless the respondent consent to have such signature inserted in its proper place.

The minister of a dissenting congregation occupied a house and garden worth more than 40s. per annum, the legal estate in fee in the premises being vested by deed in trustees. One of the trusts in the deed was "to permit the minister for the time being to reside in the premises without paying any rent." The evidence of the minister's appointment was his own statement, that it was general and for life. *Held*, that as the barrister had admitted that evidence, the appointment must be taken to have been made for life, and that the minister had an equitable estate of freehold, and was entitled to vote accordingly.

1851. *Humfrey*, for the appellant, was about to argue the first case, when

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BLAKE.

JERVIS C. J. said, These cases do not appear to have been signed by the revising barrister. The 42nd section of the Registration of Voters Act requires the barrister to sign and indorse the statement of facts; these cases are only *indorsed* with his signature. Again, the 62nd section speaks of the statement of facts sent by the appellant to the Master, "so signed by the said revising barrister as aforesaid." Then the Master is to enter the appeal; and by section 63, the judges of the Court are to make arrangements for hearing appeals "entered as aforesaid." Unless the respondent consents to waive the objection, the Court will have no jurisdiction.

Hayes, who appeared for the respondent in the first case, consented to have the signature inserted on a future occasion in its proper place at the end of the statement, and to take no objection on account of its not having been placed there at the proper time.

JERVIS C. J. We will now hear the first case, which is presumably signed, but as no one appears for the respondent in the other to consent to the same course being taken, we cannot help the appellant.

Humfrey suggested that under the 65th section, the second case might be remitted by the Court to the revising barrister.

TALFOURD J. The case can only be remitted to the barrister "by whom it shall have been signed."

Burton v. Blake struck out accordingly.

In *Burton v. Brooks* the barrister stated the following facts for the opinion of the Court.

It appeared that *Thomas Brooks* is the minister of a dissenting congregation, at *Roade*, in *Northamptonshire*. The evidence of his appointment was his own statement, that it was general and for life, and the following letter was produced:—

“*Hartwell, May 21. 1849.*

“Dear Sir,—Yesterday we asked the subscribers to stop, as we had proposed; and, as far as we could ascertain, their feelings are in unison with those of the Church members in desiring to secure your stated ministration at *Roade*. We have therefore now (on behalf of the Church) to invite you to accept the pastorate, and come and reside amongst us. In this invitation we most cordially join. We trust the matter has been the subject of much prayer, and that your coming amongst us (if such should be the will of God) may be for his glory and great good.

“We remain, yours sincerely,

William Hands, }
Wm. James, } Deacons.

“P.S.—Will you please to let us have your decision (as to next Sabbath) as early as possible, in order to afford time to get a supply, if one should be needed? Please to direct to Mr. *Hands*.”

Upon receipt of this invitation, Mr. *Brooks* entered immediately upon the office of minister, which office he still fills, and took possession of the house and premises with the consent of the trustees, and has continued in possession from that time to the present. The house and garden are worth more than 40s. per annum. The legal estate in fee in these premises was vested by an

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.1851. indenture, bearing date the 24th *July*, 1844 (when one
BURTON *Samuel Deacon* was minister), in certain trustees, and
v. the trusts declared in respect thereof, so far as are
BROOKS. material to the present purpose, are as under : — “ upon
BURTON trust from time to time, and at all times thereafter, to
v. permit and suffer the said *Samuel Deacon*, the then
BLAKE. pastor, teacher, or minister of the said congregation of
Protestant dissenters, called Baptists, belonging to the
said meeting house, for and during his life, if he should
so long continue pastor, teacher, or minister of the said
congregation, and after the death of the said *Samuel
Deacon*, or his ceasing to be pastor, teacher, or minister
of the said congregation, to permit and suffer the said
pastor, teacher, or minister of the said congregation for
the time being, such pastor, teacher, or minister to be
from time to time elected and appointed by the ma-
jority of the said congregation, to dwell, inhabit, or
reside in the said cottage or tenement, and occupy and
use the same, with the appurtenances thereto belonging;
without paying any rent: and upon this further trust,
from time to time to permit and suffer the said congre-
gation of Protestant dissenters, called Baptists, whereof
the said *Samuel Deacon* was then pastor, teacher, or
minister, and every succeeding congregation of Pro-
testant Baptist dissenters at *Roade* aforesaid, as often as
they should think fit to use the said erection and build-
ing built on the said orchard, as or for a meeting house
or place for their assembling themselves together for
the worship of God according to the privilege or in-
dulgence given or granted to Protestant dissenters by
an act of Parliament theretofore made, or by such other
act as should hereafter be made, and for their meeting
or assembling themselves together there for the same

worship, and for the well ordering and governing of the said congregation for the time being, or for any other lawful purposes, as often as the said congregation and their pastor for the time being, or the major part of them, should think fit." It was objected that, under the circumstances, Mr. *Brooks* did not take a freehold interest, but the revising barrister allowed the name to remain on the list.

1851.

BURTON
v.
BROOKS.
BURTON
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BLAKE.

Humfrey for the appellant. The decision of the barrister was erroneous. The respondent has no freehold estate, but is merely a tenant at will. *Doe d. Nicholl v. M'Kaeg (a)*. [*Williams J.* The respondent does not claim a legal but an equitable estate. *Maule J.* In the case cited the only point decided by the Court was, that, the legal estate being in the trustees, they might maintain ejectment against the minister; but it is quite consistent with that decision that he may have been an equitable tenant in fee.] The revising barrister does not find that the respondent holds his appointment for life, he only says that he was the minister of the congregation. There is nothing but the respondent's own statement to shew what the nature of his appointment was.

Hayes, for the respondent, was not called upon.

JERVIS C. J. The barrister finds that the evidence of the respondent's appointment was his own statement that it was general and for life. He appears to have considered that evidence sufficient, and therefore we

(a) 10 B. & C. 721.

1851. must take it that the respondent is minister for life,
holding his appointment under the trusts of the deed.
BURTON v. **BROOKS.** He has therefore an equitable freehold estate, and the
BURTON v. **BLAKE.** decision of the revising barrister must be affirmed.
The other judges concurred.

Decision affirmed, with costs.

CASES

ARGUED AND DETERMINED

1852.

IN THE

COURT OF COMMON PLEAS,

UNDER THE STAT. 6 VICT. c. 18.

IN

MICHAELMAS TERM,

IN THE

SIXTEENTH YEAR OF THE REIGN OF VICTORIA.

FORD, Appellant; and SMEDLEY, Respondent. *November 12th.*

AT a Court held before the revising barrister for the city of *Westminster*, the claim of the appellant to vote in the election of members of parliament for the said city was rejected, subject to the decision of the Court of Common Pleas upon the following case :

By stat. 11 & 12 *Vict. c. 90.* no person is entitled to be registered as a voter for a borough unless, on or before the 20th of *July* he shall

have paid all assessed taxes which have become payable by him previously to the 5th of *January* preceding. By the 43 *Geo. 3. c. 161. s. 23.* the assessed taxes are payable, and are to be paid quarterly, viz. on the 20th of *June*, the 20th of *September*, the 20th of *December* and the 20th of *March*. By the 48 *Geo. 3. c. 141.*, assessed taxes are to be collected in equal moieties within twenty-one days after the 10th of *October* and the 5th of *April*, but with a proviso that nothing in the act shall be construed to alter the times when the duties were payable under previous acts.

The quarter's house-tax due from the appellant on the 20th of *December* was not demanded until the 11th of *April*, and he did not pay it until the 30th of *July*. *Held*, that a demand is unnecessary except previously to a levy in default of payment, and that as the taxes are payable quarterly, though collected half-yearly, the appellant was not entitled to be registered.

1852.

FORD
v.
SMEDLEY.

The appellant claimed in respect of certain property occupied by him in the parish of *St. Clement Danes*, to have his name inserted in the list of persons entitled to vote at the election of members to serve in parliament for the city of *Westminster*. His claim was free from all objections except one, namely, that he had made default in the payment of assessed taxes.

Under the Reform Act, 2 *Will.* 4. c. 45., no person could be put upon the register unless he had paid on or before the 20th of *July* all assessed taxes which should have become payable from him in respect of the premises previously to the 6th of *April* then next preceding.

By stat. 11 & 12 *Vict.* c. 90., the period of permissible arrears is enlarged, for by that act it is sufficient if the claimant has paid on or before the 20th of *July*, all assessed taxes which shall have become payable from him in respect of the premises, previously to the 5th of *January* in the same year.

Assessed taxes appeared to the barrister to be payable quarterly on the 20th of *June*, the 20th of *September*, the 20th of *December*, and the 20th of *March*.

The instructions to the collector represent the assessed taxes as payable quarterly, and require them to be collected and recovered forthwith whenever there is danger that a tax may be lost. A copy of these instructions was laid before the barrister, and it appeared by them and from other evidence that, to save expense, and to promote convenience, assessed taxes, although payable quarterly, were in general only collected half yearly, by equal moieties, at *Michaelmas* and at *Lady-day*.

It was proved that the collectors always received

quarterly payments voluntarily tendered, and for such quarterly payments gave quarterly discharges.

1832.

FORD
v.
SMEDLEY.

The appellant was returned a defaulter under the 12th section of the Registration Act, 6 *Vict. c. 18.*, for not having paid on or before the 20th of *July*, 1852, the quarterly house-tax of the 20th *December*, 1851, and in point of fact it was proved that he did not pay that tax until the 30th of *July*, although the same was demanded of him on the 11th of *April*.

The revising barrister held, that the quarterly house-tax of the 20th of *December* 1851 was, under the stat. 11 & 12 *Vict. c. 90.*, payable from the appellant "previously to the 5th of *January* last;" and as he had allowed the 20th of *July* to expire without satisfying the demand, the barrister rejected his claim.

The appellant urged that, inasmuch as the quarterly house-tax of the 20th of *December* was not actually demanded previously to the 5th of *January*, it was therefore not payable previously to that day, but the revising barrister did not assent to that proposition.

The appellant urged, also, that it was enough for him to have paid his assessed taxes down to the 20th of *September*, 1851; but the barrister held the contrary.

The claims of 118 other persons to vote depended upon the same state of facts, and their appeals against the barrister's decision was accordingly consolidated with the principal case.

Kinglake, Serjt. (*D. D. Keane* with him) for the appellant. It is contended, in the first place, that the tax was not payable quarterly, but by half-yearly instalments, and therefore was not due until the 20th of *March*. The 27th section of the Reform Act confers

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SMEDLEY.

the right of voting on 10*l.* occupiers, subject, among other conditions, to the payment, on or before the 20th of *July*, of the assessed taxes which shall have become payable in respect of the occupation of the qualifying premises previously to the 6th of *April* preceding. The stat. 11 & 12 *Vict. c.* 90. gives the voter further time for the payment of his taxes, and substitutes the 5th day of *January* for the 6th of *April*. The question, therefore, in the present case, depends upon the construction which is to be placed on the joint operation of the stat. 43 *Geo. 3. c.* 161., and the stat. 48 *Geo. 3. c.* 141. By the 23rd section of the first of these statutes (The General Assessed Taxes Act) it is enacted that the duties assessed shall be paid by quarterly instalments: but the directions given in the 3rd rule of the stat. 48 *Geo. 3. c.* 141. requires that they shall be collected half-yearly, within twenty-one days after the 10th of *October* and the 5th of *April* in each year, with a proviso that nothing therein contained shall be construed to alter the times or proportions at or in which the said duties were made payable by former Acts, or in any way to impeach or affect the powers or provisions of the said Acts for the recovery of such duties at the times and in the proportions therein described. It will be argued for the respondents that the collectors may still exercise the power given by former Acts, of levying for taxes quarterly; but it is submitted that the meaning of the two statutes, taken together, is, that for all ordinary purposes the taxes are to be collected half-yearly, and that the power of levying is reserved for cases of emergency. The general practice is consistent with this view of the law. Nobody ever heard of a quarterly collection of assessed taxes. What, then, is the meaning

of the words "which shall have become *payable*" in the 27th section of the Reform Act? The corresponding section in the Irish Reform Act, 2 & 3 *Will.* 4. c. 88. s. 7., has the words "legally due and payable," and, looking at the manifest inconvenience which would arise from any over-refined distinction between that which is *payable* and that which may be *collected*, it is submitted that the true meaning of the Acts of Parliament is that the assessed taxes are payable half-yearly, and not by quarterly instalments. But, secondly, even if the Court should feel bound to hold, upon a strict construction of the words of the statutes, that these taxes are payable quarterly, it is contended that the voter cannot be disfranchised by non-payment, until a demand has been made by the collector. No demand of payment was made in the present case before the 5th of *January*. By 43 *Geo.* 3. c. 99. s. 33. the collectors are required to "demand" payment, and in case of refusal they are then authorised to distrain. [*Jervis* C. J. That is, they cannot collect forcibly until after a demand.] The 10% occupiers are substituted by the Reform Act for the old scot and lot voters, and it has been decided that a scot and lot voter could not be disfranchised for non-payment of rates without demand; *Cullen v. Morris* (a). [*Jervis* C. J. No period was fixed for the payment of scot and lot, and consequently a party might pay his rates at any time before he actually gave his vote.]

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Wordsworth for the respondent. Upon the last point, *Rex v. Ford* (b) is an express authority to show

(a) 2 *Stark*, N. P. C. 577.(b) 2 *A. & E.* 588.

1852. that the principle of the decision in *Cullen v. Morris* (a)
 Foad does not apply to the payment of assessed taxes. [He
 v. was then stopped by the Court.]
 SMEDLEY.

JERVIS C. J. It seems to me that in this case the revising barrister put a right construction upon the statutes relating to the assessed taxes, and, therefore, properly rejected the vote of the appellant. No doubt this is a case of great importance, for in the present state of ignorance on the subject, a great many householders may be disfranchised because their attention has not been called to the general bearing of these acts of parliament, and consequently their taxes not having been demanded, they have not paid them quarterly as the law requires. The difficulty has arisen from the framers of the recent statute (11 & 12 *Vict. c. 90.*), who wished to allow a longer period for the payment of taxes, not bearing in mind the time at which they were payable under the old law. By the statute 43 *Geo. 3. c. 161.*, taxes are to be paid by quarterly instalments, but the Reform Act, it is said, was framed with a view to the mode of collection, which, although the taxes were *payable* quarterly, only contemplated half-yearly *payments*, namely, in *September* and in *March*. Unhappily, this was not attended to in framing the new act, and therefore that act has not effected what it was intended to do. Taxes, though payable quarterly, are in fact demanded half-yearly, and accordingly the days selected in the Reform Act were applicable to this state of things, for by that act it is provided, that no occupier shall vote unless he shall

(a) 2 *Stark. N. P. C.* 577.

have paid on or before the 20th *July*, all the poor's rates and assessed taxes which shall have become payable from him previously to the 6th *April* then next preceding, which means, those which are due on the 20th *March*, and have been demanded, because the taxes which are due in the *March* quarter, with those which are also due for the previous quarter, are demanded half-yearly in *March* or *April*, and are payable by the Reform Act between *March* and the 20th *July*. These minute matters, which often escape the attention of legislators, were borne in mind by the framers of the Reform Act, but not by the framers of the recent act, for by extending back the time for payment from *April* to *January*, they have either included another quarter, that due in *December*, or prevented the party having notice by a demand. The effect is this; you are still only to pay on the 20th *July*. If before the 20th *July* you pay the taxes demanded of you in *March* or *April*, you, in truth, do pay the tax that was due in *January*. If you choose to wait for notice you must pay the tax due for the quarter ending on the 20th *March*, as you did under the old act, but if you choose to avail yourself of the recent act, you must not wait for notice, but must go and tender to the collector the tax due in *January*. That is the practical bearing of the two acts. The real question is, whether this tax was payable on the 20th *December* or on the 20th *March*, or only on demand? When you come to look at the acts of parliament, there is really no difficulty whatever. The scheme of the statutes is plain and intelligible. The assessment is made for the year, and under the original act (43 *Geo. 3. c. 99. s. 12.*) payment was to be demanded within ten days after the taxes became pay-

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able. The second act (43 *Geo. 3. c. 161. s. 23.*) fixes specifically the periods at which the tax is to become payable, and says that it shall be paid by quarterly instalments on the 20th *June*, the 20th *September*, the 20th *December*, and the 20th *March*. Then, in order to avoid what might appear to be a hardship, by enabling the collector instantly to pounce on the taxpayer, and put his powers in force without further notice, the statute provides that a demand shall be made, within a certain time after the money becomes due, before levy or execution by seizing his goods. By the stat. 48 *Geo. 3. c. 141.* directions are given for collecting the taxes in moieties, namely, one moiety before the 10th of *October*, or within twenty-one days thereafter, and the other moiety before the 5th of *April*, or within twenty-one days thereafter; and in order to avoid any difficulty or ambiguity, it is expressly provided that nothing therein contained shall be construed to alter the times or proportions at or in which the said duties are payable, and that it shall be lawful to demand, receive, or levy the same according to the previous acts. It has been contended on the part of the appellant that there are expressions in the statute which treat the levy and payment as identical, that is, after the half-year has expired. But that argument has been already answered by saying, that if you levy, payment so enforced necessarily involves a previous demand, because the act of parliament which gives the power to compel payment by such means requires that there should be a demand previous to the levy. As to a previous demand being necessary, the answer to that question follows from the other. The tax is made payable quarterly by the statute, and is therefore pay-

able, though it cannot be *enforced*, without demand. The appellant, therefore, has not paid in due time the tax which was payable on the 20th *December*, and I think that the revising barrister was right in disallowing his vote.

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MAULE J. I entirely agree with what the Lord Chief Justice has said. He has pointed out how it has happened that the act of *Victoria* has not given all the relief to the voter which the legislature may have intended. That, however, is only after all matter of conjecture, and such considerations could only be called in aid in the construction of this act if the words of the act were obscure, or if their meaning were doubtful, or if they involved some manifest contradiction, or if some great inconvenience must necessarily arise from construing the words in their natural sense, so as to induce the Court to believe that they must have been used in another and a different sense. Now, I do not think that there is any inconvenience of that kind to be apprehended. The words of the act are that the voter shall pay all taxes which are payable from him before the 5th of *January*. The question then is, what taxes are so payable, and the answer must be sought in the words of the act imposing the tax in question, which provides that it shall be payable quarterly. It is true that there are certain provisions in another part of the act, requiring the collector to collect the taxes half-yearly; that is, not to let them go over the half-year. But there is nothing to prevent his collecting them quarterly if he pleases, although such is not the ordinary practice. Whenever they are to be collected they must be paid, and they are to be

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received when they are directed to be paid, and described as being payable. These words have a clear, simple, and plain sense, and such a sense ought to be given to them unless they could not possibly be used in that sense without some extraordinary inconvenience. I doubt, indeed, whether any thing could justify us in saying that by the words "pay" and "payable" any thing else was meant. Some words are so plain that you cannot use them in any but their ordinary meaning without doing violence to language. Thus, if an act of parliament says that 20s. shall be paid, you cannot say that 25s. or 15s. is the payment intended. Therefore, when one act of parliament says that taxes shall be "payable" in *December*, and another act says that all taxes so payable shall be "paid" before the 20th of *July*, you must understand those words in the simple sense which they bear. The result is, that the appellant has not complied with the conditions prescribed by the act 11 & 12 *Vict. c. 90.*, and therefore his claim to a vote was properly rejected by the revising barrister.

TALFOURD J. (a) I am entirely of the same opinion. The words of the statutes are so plain and clear, that it seems to me that no inconvenience could arise which could justify our putting any other construction upon them than that now adopted by the Court.

Decision affirmed, with costs.

(a) *Williams J.* was absent.

1852.

HAMILTON, Appellant; and BASS, Respondent. *November 12.*

THIS was a consolidated appeal from the decision of the revising barrister for the eastern division of the county of *Cumberland*.

At a Court held for the revision of the list of voters for the township of *Caldewate*, *Wm. Bass*, whose name was on the register of voters for the county for the time being, objected to the name of *John Hamilton* being retained on the list for the township of *Caldewate*. *John Hamilton* was registered to vote in respect of one undivided thirtieth part of a freehold dwelling house, dwelling rooms, bakehouse, schoolroom and reading room in *Church Street* and *Bread Street*. In 1846 a conveyance of the property in question was duly executed to the use of the voter and twenty-nine others in fee. The purchase money was advanced in equal portions by each of the thirty persons in whose favour the conveyance was made. Immediately after the purchase the property was let on behalf of the purchasers at a gross rent of 75*l.* 15*s.* with an agreement that the landlord should pay all rates and taxes. The tenants were rated to the poor and other usual tenants rates, amounting to 10*l.* 10*s.* 10*d.*, and a lighting rate, and "board of health" rate amounting together to 2*l.* 0*s.* 7*d.* per annum. All these rates were in pursuance of the terms of the letting paid by the landlords, though but for the agreement to that

Where freehold premises belonging to thirty persons were let at a gross rent of 75*l.* 15*s.*, but the landlords, by agreement, paid rates, taxes, and charges, which reduced the rent which a solvent tenant would give for the property to 63*l.* a year, and also voluntarily paid for repairs, which for six years previous had cost 4*l.* a year on an average — *Held*, that the question whether the annual value of the freehold was reduced by such payments for repairs below 60*l.* depended upon the rent which could be obtained if the tenants had had to keep the premises in repair; and that, as it was found that the rent which could be obtained in that case was less than 60*l.*, the property was not worth 40*s.* per annum to each landlord, and consequently that none of them were entitled to vote in respect of it.

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BASS.

effect they would have been payable by the tenants, and the rental of the property would have been diminished by the amount of the rates. Besides these rates there had been an expenditure on behalf of the landlords in each year, in order to keep the premises in sufficient repair. This expenditure had in the last year reduced the resulting share of each landlord to less than 40s. but in other years it had left to each landlord more than 40s. The average expenditure for repairs upon the six years from 1846, had been 4*l.* a year, and such a sum by the year upon an average was necessary to be expended in repairs by the landlords, to enable them to obtain the rent of 75*l.* 15*s.* There was a further annual expense to the landlords for collecting rents, and which was a necessary expense of 1*l.* 6*s.* A manager had been appointed on behalf of the landlords, who had in each year collected the rents, paid the expenses, kept the accounts, divided the profits, and transmitted to each landlord his resulting share. Upon this state of facts it was agreed upon both sides that the annual rent which a solvent tenant would give for the property in its then condition, must be taken to be 63*l.* 3*s.* 7*d.*, and that the sum of 1*l.* 6*s.* was a charge payable by the landlords in respect of the property which ought to be deducted; but it was contended on behalf of the voter, that the sum of 4*l.* being the average expenditure for the necessary repairs as aforesaid, ought not to be treated as a charge payable by the owners in respect of the property, and that it ought not to be deducted, whilst it was contended on behalf of the objector, that the average expenditure of 4*l.* for necessary repairs was a charge payable by the owners in respect of the property which ought to be

deducted. The revising barrister held, that the true measure of the annual value of the property in this case, was the gross rent, less the usual tenants' rates before mentioned, and that the annual charge for collecting was a charge which ought to be deducted, and further that the average annual expenses for necessary repairs was also a charge payable by the owners in respect of the property which ought to be deducted, in order to determine the annual value of the property to the owners. If the sum of 4*l.* was deducted, the resulting share to each owner was less than 40*s.* by the year; if it was not, the share to each owner was more than 40*s.* The revising barrister held, that the share of each owner was of less value than 40*s.*, and struck the name of the voter from the list.

1852.

HAMILTON
v.
BARR.

Mellor for the appellant. The question in this case is, whether landlord's repairs are "rents and charges" which are to be deducted from the yearly value of the property, pursuant to stat. 8 *Hen. 6. c. 7.*; 10 *Hen. 6. c. 2.*; and 18 *Geo. 2. c. 18. ss. 5, 6.* A mere outgoing is not a "charge" upon the land. [*Maule J.* That may be so, but an outgoing affects its yearly value. The land must be worth enough to enable the landlord to dispend 40 shillings by the year. If a man can get 40 shillings out of his land by laying out 5 shillings upon it, but not otherwise, is he not disabled by the statutes from voting? *Jervis C. J.* referred to *Lee v. Hutchinson (a).*] It is contended that the only deductions to be made from the annual value are rents and charges; public taxes are outgoings, yet the 6th section of the stat. 18 *Geo. 2. c. 18.* expressly declares

(a) *Antè*, p. 159.

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that they shall not be deemed to be a charge on the freehold. In *Rex v. Tomlinson* (a), Bayley J. says that the net rent of premises means that part of the rent which goes into the pocket of the landlord, "after deducting taxes and charges of collection." (He referred also to *Rex v. Framlingham* (b).)

Suppose the annual value of a house to be 5*l.*, and that the owner does not repair it for five or six years, but then expends 12*l.* upon it, is it to be said that he has no right to vote? Is he to have a vote one year and not another? Is he to be disfranchised the last year or every year? In *Colvill v. Wood* (c) it was held that the fair annual rent of premises is the proper criterion of their "clear yearly value" within the meaning of the 27th section of the Reform Act; without making any deductions for landlord's repairs or insurance. [Jervis C. J. The question in *Colvill v. Wood* (c) was, what was the clear yearly value of the house to the tenant, not to the landlord. Maule J. The statute speaks not of "rent" but "value." In *Colvill v. Wood* (c) the repairs done by the landlord increased the value to the tenant, for he enjoyed the benefit of the repairs without paying for them; but here the repairs diminished the profit which the landlord derived from the premises, and the question is, what is the value of the property to the landlord?] It is submitted that it would be better to lay down a broad and intelligible rule, rather than introduce a principle which must lead to very artificial and subtle distinctions, depending upon the nature of agreements between the parties. The more reasonable rule would be to hold that repairs which are purely voluntary,

(a) 9 B. & C. 166.

(b) 2 Bott. P. L. 539.

(c) Antè, Vol. I. p. 483.

and which may or may not be done within a given period on the part of the landlord, are not to be computed as a "charge" upon the land.

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S. Temple for the respondent. The question really involved in this case does not depend upon the meaning of the word "charges" in the statutes referred to, but whether the claimant can dispend, not 40s. in any one year, but by the year. [*Maule J.* If a man occupies a piece of ground which is worth more than 40s. a year to him, because he grows corn upon it which sells for more than 40s., surely the expenses of cultivation must be taken into the account. Manuring land, for the purpose of renewing its productive powers, is analogous to repairing a house.] No doubt that is so, and the estimate of value must be taken strictly against the landlord, because the stat. 8 *Hen. 6. c. 10.* is a restraining statute. Formerly the right of election vested in the freeholders of the county at large, but that act limited the franchise to those who could dispend 40s. by the year. *Blackstone (a)* says "Bishop Fleetwood, in his *Chronicon Preciosum*, written at the beginning of the present century, has fully proved 40s. in the reign of *Henry VI.* to have been equal to 12*l.* per annum, in the reign of *Queen Anne*; and, as the value of money is very considerably lowered since the bishop wrote, I think we may fairly conclude, from this and other circumstances, that what was equivalent to 12*l.* in his days is equivalent to 20*l.* at present." At this time 40*l.* per annum would probably more nearly represent the value of 40s. in the reign of *Henry VI.* The principle by which this case must be decided has been

(a) *Comm.* Vol. I. B. 1. p. 172.

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established beyond dispute by *Copland v. Bartlett* (a); *Lee v. Hutchinson* (b); and *Beamish v. The Overseers of Stoke* (c).

Mellor replied. In *Rex v. Ringwood* (d), it was held that the renting of an acre of land at 8*l.* from *Easter* to *October*, for planting potatoes, when the land had been previously dug by the landlord for that purpose, and which would not have been let for more than half that price if it had not been dug, was a tenement of the yearly value of 8*l.*, although the case stated that, in a common way, an acre of such land would not let for more than 2*l.* The mode of valuation contended for by the respondent would impose difficulties upon the revising barrister which he could hardly surmount. It would be necessary for him in every case to ascertain the actual outgoings every year. [*Maule* J. The question of the value of property is always a question of evidence, and one which, whether it be intricate or not, the revising barrister will always have to decide.] (e).

JERVIS C. J. It appears to me that the decision of the revising barrister was substantially correct in this case. The question is whether this payment is within the 8 *Hen.* 6., and whether the property is worth 40*s.* by the year, to the landlord. I do not think that a mere voluntary payment is a charge on the property, within the meaning of that statute. But then the other point is within the principle of the decision in *Lee v. Hutchinson*. It was there said, that what the pro-

(a) *Antè*, p. 102.(b) *Antè*, p. 159.(c) *Antè*, p. 189.(d) 1 *M. & S.* 381.(e) See *Coogan v. Luchett*, *antè*, Vol. I. p. 450., per *Maule* J.

perty is worth is a question of fact, and here the question is, would the tenant have given the landlord 63*l.* a year if he had to do the repairs? The revising barrister has found that he would have given 59*l.* only, which is insufficient. In each case the question to be determined is one of fact, and the barrister must decide it upon the circumstances of each case, the criterion being not rent, but value.

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v.
BASS.

MAULE J. I agree with the Lord Chief Justice, for the reasons stated in the course of the argument.

TALFOURD J. concurred (*a*).

Decision affirmed, with costs.

(*a*) *Williams J.* was absent.

COLLINS, Appellant; and the Town-Clerk of
TEWKESBURY, Respondent. November 12.

UPON a consolidated appeal from the decision of the revising barrister for the borough of *Tewkesbury*, the following case was stated by him for the opinion of the Court:

John Collins objected to the name of *James Beesley* being retained on the list of persons entitled to vote for the borough, in respect of the occupation of premises described in the list as "house and garden," on the ground that the garden was separate and apart from the house.

"Therewith" in the 27th section of the Reform Act refers to time and not to locality, and consequently land at a distance from a building, if both be occupied during the qualifying period by the same person as owner, or as tenant under the same landlord, may be

valued with the building, for the purpose of making up a borough qualification.

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COLLINS
v.
The Town-
Clerk of
TEWKESBURY.

The party objected to occupies a house in *Chance Street*, within the borough of *Tewkesbury*. He is also a tenant under the same landlord of garden ground (also within the borough of *Tewkesbury*) which is not immediately adjoining the house; but the house and piece of garden ground were both taken of the same landlord, at the same time, and at one entire rent. The garden ground is at the back of the voter's house, and not more than forty yards distant from it in a direct line; but between the house and the garden ground there is some waste land and a row of buildings, and to get to the garden ground the voter must go out of his front door into *Chance Street*, and along the public road for not more than sixty yards; then turn to the right and go along another public road for not more than forty yards, to the gate leading into the garden ground. The garden ground is allotted amongst the tenants of the houses in *Chance Street*, each tenant having a separate allotment, which is included in and forms part of his tenancy. The house and the piece of garden ground let with it are together worth more than 20*l.* per annum, but the house alone is not of the annual value of 10*l.*

The revising barrister decided that *James Beesley* occupied a house and land of sufficient value to entitle him to have his name retained in the list of voters for the said borough, within the meaning of the statute 2 *Will. 4. c. 45. s. 27.*, and retained his name accordingly.

Kerr, for the appellant. This case depends upon the construction which the Court may think proper to give to the word "therewith" in the 27th section of the Reform Act, which confers the right of voting in boroughs upon the occupier of a house, or of a house

and land, of 10/. annual value. It has never been decided whether, when the qualifying property consists of a house and land, the land occupied with the house must be contiguous to it, or whether the word "therewith" is satisfied by an occupation of the land at the same time as the house. In delivering the judgment of the Court in *Capell v. The Overseers of Aston* (a) *Wilde C. J.* suggests that "therewith" may import local contiguity, and it is submitted that such is the true construction, being the only one which satisfies the rule that every word should have a value and meaning of its own, if possible. If it should be argued that "therewith" applies to unity in point of time, the expression is surplusage, for the words "occupied by him as tenant under the same landlord" imply that. Further, it would be unreasonable that land detached from a house should be valued with it for the purpose of conferring a vote, when it has been held that two buildings which are not within the same curtilage cannot be joined together so as to constitute one entire qualification; *Powell v. Price* (b). [*Maule J.* The words of the act are very plain. They mean that the voter must occupy the land within the borough, at the same time as the house, and as tenant under the same landlord.]

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Clerk of
Tewkesbury.

Pashley, for the respondent, was not called on.

Per Curiam.

Decision affirmed, with costs (c).

(a) *Antè*, p. 156.

(b) *Antè*, Vol. I. p. 586.

(c) This decision of the Court justifies the opinion hazarded on the point, in the note to *Burton v. The Overseers of Aston*, *antè*, p. 152.

1852.

November 12.

LAMBERT, Appellant; and The Overseers of
ST. THOMAS'S, NEW SARUM, Respondents.

A notice of objection was in the following terms: "Take notice, that I object to your name being retained on the list of voters for the parish of St. Thomas, New Sarum, in the southern division of the county of Wilts." Held, sufficient notice to a person (within stat. 6 Vict. c. 18, s. 7.) that his vote for the county would be objected to.

THIS was a consolidated appeal from the decision of the revising barrister for the southern division of the county of *Wilts.*

At a Court held for the revision of the list of voters for the parish of *St. Thomas, New Sarum*, *John Lush Alford* objected to the name of *John Lambert* being retained on the list of voters for that parish. The facts of the case were as follow: The said *John Lush Alford* had duly served the said *John Lambert* (the appellant) with a notice of objection, of which the following is a copy:

"To Mr. *John Lambert*, of the parish of *Milford*, in the county of *Wilts.* Take notice that I object to your name being retained on the list of voters for the parish of *Saint Thomas, New Sarum*, in the southern division of the county of *Wilts.* Dated this 24th day of *August*, in the year 1852. *John Lush Alford*, of *New Street*, in the parish of *Saint Thomas, New Sarum*, on the register of voters for the parish of *Saint Thomas, New Sarum.*"

It was objected before the revising barrister that this notice not being according to the form No. 5, Schedule (A), annexed to the act 6 Vict. c. 18., or to the like effect, it was not sufficient; but the barrister held that it was sufficient, and as *Lambert* did not prove his qualification, he expunged his name from the list of voters.

Warren, for the appellant. It is beyond dispute that the notice does not correspond with the form given by the act; and it is not to the like effect, because it is ambiguous, and leaves the party at a loss to ascertain whether his county or his borough vote has been objected to. There is a parish of *St. Thomas* in *Salisbury*, residence in which would confer a vote for the borough. [*Jervis C. J.* That does not appear in the case. But, assuming that there is such a parish, this notice is addressed to a gentleman who lives in the parish of *Milford*, in the county of *Wilts*. The question is, whether he was misled by the notice. He referred to *Eaden v. Cooper (a)*.] That was a case of an inaccurate description of a qualification in a notice of claim, and turned upon the power of amendment possessed by the revising barrister; but a notice of objection must be clear and precise in its terms. The principle established by the decisions is, that if the notice can mislead the voter, it is bad; *Allen v. House (b)*; *Edsworth v. Farrer (c)*; *Woollet v. Davis (d)*. [*Talfourd J.* In the last two cases it was the description of the objector that was ambiguous; a party objected to must know whether he has a vote or not.] The party objected to may have more votes than one, and he has a right to be told plainly which of them is called in question. In *The Mayor and Overseers of Harwich, In Re Butcher (e)*, it was held by *Crompton J.*, that a notice of objection under the statute 5 & 6 *Will. 4. c. 76. s. 17.* was not sufficient, when it did not describe the party objected to as he was described in the burgess

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LAMBERT

v.

Overseers of
St. Thomas's,
New Sarum.(a) *Antè*, p. 183.(b) *Antè*, Vol. I. p. 255.(c) *Antè*, Vol. I. p. 517.(d) *Antè*, Vol. I. p. 607.(e) 22 *Law Journ. Rep. (N. S.) Q. B.* 81.

1852. list, upon the ground that there might be two persons of the same name.

LAMBERT

v.

OVERSEERS of
ST. THOMAS'S,
NEW SARUM.

No counsel appeared on the behalf of the respondents.

JERVIS C.J. It seems to me that the revising barrister was quite right in the view which he took of this case, and that this was a good notice of objection. The 7th section of the stat. 6 *Vict. c. 18.* does not say that the notice must be given in the precise form contained in the schedule; it is sufficient if the notice be to the like effect. The objection here is that the notice, after speaking of the list of voters, omits the words "for the county;" but it speaks of the list of voters for the parish of *St. Thomas, New Sarum*, in the southern division of the county of *Wilts.* Any supposed inaccuracy is therefore cured by the 101st section of the statute, which provides that no inaccurate description in any notice required by the act shall prevent or abridge its operation, provided the thing inaccurately described shall be so denominated as to be commonly understood. Now, can any person reading this notice understand it otherwise than to apply to a vote for the southern division of the county of *Wilts*? The notice is not intended to be a legal description, but a mere reference. I apprehend, therefore, that the question for the revising barrister was one of fact, whether the party objected to was misled by the form of the notice; and as he has decided that question against the appellant, we are bound by his finding.

MAULE J. I think this notice of objection is to the "like effect" of the form given in the schedule. But if there be any doubt about that, the defect would be re-

moved by the operation of the 101st section. Can any one imagine that people would not commonly understand that the list meant was the county list of voters, even though some uncommon person might understand otherwise?

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v.

Overseers of
St. THOMAS'S,
NEW SARUM.

TALFOURD J. concurred (a).

Decision affirmed.

(a) *Williams J. was absent.*

BRESON, Appellant; and BURTON, Respondent. November 17th.

AT a Court held before the barrister appointed to revise the lists of voters for the southern division of the county of *Leicester*, the name of *John Burton*, and the names of twenty-eight other persons claiming under exactly similar circumstances, were duly objected to by the appellant. The barrister overruled the objection, subject to the opinion of the Court on the following case:

The said *John Burton* appeared on the list of claimants as follows:

Burton, John	3. Haymarket	Freehold interest in building and land	On record, The Freemen's Common.
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John Burton is a resident freeman of the borough of *Leicester*, and possessed of an allotment of land under

for that purpose, but, subject to this power, the freemen obtaining possession of allotments were entitled to hold them so long as they were willing to hold them, and paid the annual rent, and conformed to the orders and regulations made by the deputies:

Held, that the allottees had estates of freehold qualifying them to vote for members of parliament, as their estate might continue for life, and was not determinable at the mere will of the deputies.

By a private inclosure act, certain allotments of land, belonging to the resident freemen of the borough of *Leicester*, were vested in deputies elected by the freemen, in trust for them. The deputies had power to dispose of the whole or any part of these allotments, freed and discharged from right of the freemen, upon obtaining the consent of the major part of the freemen assembled in public meeting

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 v.
 BURTON.

the provisions of a private act of parliament (8 & 9 Vict. c. 6), entitled "An Act to repeal so much of an Act for enclosing Lands in or near the Borough of *Leicester* as relates to the Regulation and Management of the Freemen's Allotments, and to make other Provisions in lieu thereof." By this act (which was annexed to and formed part of the case), the resident freemen are empowered to elect from their own body a certain number of deputies to act for them in the regulation and general management of the freemen's allotments. The 8th section empowers the deputies to take possession of the lands comprised in the first schedule of the act (of which lands the allotment of the claimant forms a part), and break up the whole or such parts thereof as to them shall seem expedient, and apportion and divide the same when so broken up into small allotments, not exceeding 500 yards each, among the resident freemen desiring to become occupiers thereof, at an annual rent to be fixed at the discretion of the deputies, but not exceeding one farthing for every square yard, nor less than one shilling for every 100 yards, the allotments to be held respectively by each resident freemen desiring to become the occupier and obtaining possession thereof, *so long as he shall be willing to hold the same, and shall pay the annual rent, and conform to the orders and regulations to be made from time to time by the said deputies.* By the 15th section all the lands comprised in the two schedules of the act are vested absolutely in the deputies for the time being, in trust for the resident freemen. By the 17th section the deputies have power to dispose by absolute sale of all or any part of the allotments comprised in the first schedule of the act, freed and discharged from all right, claim, and interest.

of the resident freemen ; but by the 22nd section no sale is to be effected under the powers of the act, without the consent of the major part of the freemen, assembled at a public meeting, to be convened and conducted in the manner directed by that section. By the 32nd section, in case any freeman shall be in arrear of rent for his allotment for fourteen days, or shall not conform to the provisions of the act, or the orders, rules, and regulations to be made by the deputies, the deputies may re-enter such allotment, and by force evict and dispossess such freemen. The claimant has erected buildings on the land allotted to him, which land and buildings are above the value of 40s. a year above all charges.

It was contended, on the part of the appellant, that the claimant had no freehold interest in his allotment ; but the revising barrister decided that he had, and inserted the claimant's name accordingly on the list of voters for the parish of *St. Mary, Leicester*.

E. W. Cox, for the appellant. The question is, whether the owners of these allotments had a freehold interest in them ; and that question depends upon the construction of the whole of the private act referred to by the case. By the 8th section of this act the deputies are empowered to break up certain lands, and to parcel them out in small allotments to freemen desiring to become occupiers of them. The allotments are to be held as long as the occupiers are willing to hold them, paying the rent, and conforming to the rules made by the deputies. Thus, the right of the allottees to hold is restricted by the powers of the deputies. The case, therefore, comes within the authority of *Davis v.*

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v.
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Waddington (a), where it was held that the inmates of an almshouse, called *Jesus' Hospital*, did not obtain a freehold by their appointment, but merely an estate during the pleasure of the governors. The decision of the Court proceeded upon the ground that the trustees had the power of removal, and there is the same power of removal here. [*Maule J.* Not without the consent of a majority of the freemen assembled at a public meeting.] Then there arises the question, whether a man can have a freehold in that from which he is liable to be removed by the consent of any other person. [*Maule J.* The rule laid down in *Co. Litt.* 42 a. is, that a man who has an estate granted to him for an uncertain period has an estate for life. What interest has the respondent, if not a freehold interest?] He is tenant at will, or rather he has a species of parliamentary estate, larger than a tenancy at will, but not equal to a freehold.

Hayes for the respondent. It is submitted that the allottees have an estate for life. The freemen are to hold as long as they are willing, and will pay the rent and observe the regulations. *Davis v. Waddington* (a) has no application. There the almsmen only held as long as the governors of the hospital chose to allow them. The present case, on the contrary, comes within the principle of *Simpson v. Wilkinson* (b), in which the Court decided that bedesmen of a hospital who could only be removed for certain infirmities and vices specified in the ordinances by which the hospital was governed, had a freehold interest. In a note to Messrs.

(a) *Antè*, Vol. I. p. 159.(b) *Antè*, Vol. I. p. 168.

Manning & Granger's report of *Davis v. Waddington* (a) there is a collection of authorities fortifying the proposition laid down in the note to *Wynne v. Wynne* (b), viz. "that any interest in land of uncertain duration (though not expressed to be for life) determinable by matter subsequent, which (*per Brooke J. M.* 14 *Hen.* 8. fol. 13 a.) is the substance of human agency (*as where it is determinable at the will of a stranger*) (c) constitutes a freehold for life." The object of the note to *Davis v. Waddington* (a) seems to be to show that the Court rather strained the law in that case. [*Jervis C. J.* I never knew my brother *Manning* write a note, except for the purpose of showing that the Court was wrong.] The learned reporter cites this passage from *Preston on Estates* (d), "A limitation for such an indefinite period passes an estate for life, because the estate *may* continue to the end of that period, and is certainly circumscribed by it." It is contended that the estate granted to the allottees in this case is an estate for life, because it is only an uncertain event which can put an end to it, and is not held at the mere will of the grantor. It may be said to depend in some measure upon the will of the allottees themselves, as represented by the majority of the freemen in public meeting assembled, whose consent is necessary to a determination of the estate. If it be not an estate for life, what is it? It has been shown that it is not a tenancy at will, and it has not even been suggested that

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 BRISON
v.
BUSTON.

(a) 7 M. & G. 45.

(b) 2 M. & G. 19.

(c) The words in italics are an interpolation of the annotator.

Jervis C. J.

(d) 7 M. & G. 46.

1852. it is an estate for years. It follows, therefore, that it must be an estate for life.

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BUNTON.

Cox, in reply. The estate is not dependent on the will of a stranger, in which case a freehold interest would be created; but on the will of a stranger and the will of the deputies, exercised jointly.

JERVIS C. J. It appears to me that the view taken by the revising barrister in this case was correct, and that his decision must be affirmed, the claimant having such a freehold interest as entitles him to vote. It is admitted by Mr. *Cox* that the possession of an estate of an uncertain interest would generally be sufficient to confer upon the possessor a vote as a freeholder, but he says that here the interest is not uncertain, because, within the principle of *Davis v. Waddington* (a), the estate is determinable by the deputies according to the terms of the act of parliament. Now, upon looking into the 8th section, I find that the allottees are to hold so long as they are willing to hold and pay a certain fixed rent, and conform to the rules and regulations made by the deputies. It is admitted that if there were nothing else in the act, these words would give the allottees a freehold interest; but it is contended that they are so qualified by the language of subsequent sections that their effect is entirely altered. The question, however, that has been put by my brother *Maule* and by Mr. *Hayes*, is an important one; if this be not an estate for life, what is it? It is not an estate for years; no one contends that it is. It is not an estate at will, because it is not

(a) *Ante*, Vol. I. p. 159.

held at the uncontrollable will of the lord. Mr. Cox says it is a sort of parliamentary estate, floating between an estate for life and a tenancy at will, but not sufficient to confer the franchise. I think, however, that it would be highly inconvenient if we were to hold so, and that from the known and plain rules of law we cannot regard it as any thing else than a freehold. It is clear from *Davis v. Waddington* (a) that, if the deputies had an absolute power of sale, it would have been an estate at will. But this estate is not held at the uncontrolled will of the deputies, but at the concurrent will of the deputies and the majority of the freemen assembled at a public meeting. I do not think it necessary to discuss the proposition that the party's own will is indicated by the majority, on the principle of representation. That may, or may not, be a refinement upon the act; but at all events it is clear that any other freeman, as between himself and the allottee in this case, is a stranger to the claimant. But the will of a stranger is an uncertain event. It is uncertain whether the majority of the freemen will or will not consent to a sale. The estate of the respondent is therefore determinable upon an uncertain event, and consequently he has, according to the rule laid down in *Co. Litt. 42 a.*, an estate for life.

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v.
BURTON.

MAULE J. I think that the claimant in this case has been rightly held by the revising barrister to be entitled to a vote. The franchise has been given to freeholders, seised for life of a legal or an equitable estate. It is well established that an estate which may last for a

(a) *Antè*, Vol. I. p. 159.

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man's life is, ordinarily speaking, an estate of freehold. Such an estate is an estate held on a condition which is not determinable at the arbitrary will of the lord. In this case the estate is capable of being determined on the happening of an event of a very special character, viz.: the event of the deputies choosing to sell with the concurrence and consent of the majority of the freemen for the time being. That is an event which is clearly not dependent on the arbitrary will of the lord. It is the power of arbitrary removal which takes away the freehold character of property. Here the event is as much out of the power of the lord as if he had no occasion to concur in it at all. If there is any body besides himself to concur, the circumstance of the lord's concurrence being necessary does not render the other's concurrence less independent of him, nor less necessary for determining the estate. Such an estate as that is clearly, according to the old cases, an estate of freehold. With respect to *Davis v. Waddington* (a), that case appears to me to have been perfectly well decided. There the person enjoying the property, and claiming the right to vote, was a person who was to receive certain emoluments so long as the trustees of the hospital thought fit to allow him to retain them. The Court held, quite in accordance with the current of authorities, and with the common sense and apprehension of mankind, that such was not an estate of freehold. It is clear that there was no freehold there; it is equally clear that there is a freehold here. The revising barrister was, therefore, quite right.

(a) *Antè*, Vol. I. p. 159.

WILLIAMS J. I think that the estate in respect of which the right to vote is claimed is an uncertain interest which may last for the life of the tenant, and is not referred to the will of the person next in succession. It appears to belong to that class of cases in which an estate is granted to a man so long as a particular tree shall stand, or so long as *A.* and *B.* shall remain justices of the peace.

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v.
BURTON.

TALFOURD J. I am of the same opinion.

Decision affirmed, with costs.

MOORE, Appellant; and the Overseers of CARISBROOKE, Respondents. November 17th.

THIS was an appeal from the decision of the revising barrister for the county of the *Isle of Wight*.

At a Court held before the said barrister for the revision of the list of voters for the parish of *Carisbrooke*, *John Moore* objected to the name of *James Saunders* being retained on the register of voters for the said parish. It was proved that *Saunders* was the owner of a piece of freehold land, called *Edward's land*, situate in the said parish, of the annual value of 5*l.*, but that this land was (with other land of the annual value of 50*l.*, belonging also to the said *Saunders*) mortgaged for a sum of 300*l.*, and that the interest on such mortgage amounted to the sum of 15*l.* by the year. The sole objection made to the said *Saunders*

The qualification of a voter as described in the list was a piece of freehold land, which was proved to be worth 5*l.* annually, but which was mortgaged (with other land belonging to the claimant) for 300*l.*, the interest thereon being 15*l.* a year: Held, that the interest was apportionable, and that the claimant, having an estate worth more than 40*l.* a year, was entitled to a vote for the county.

entitled to a vote for the county.

1852.

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was, that he was not entitled to a freehold estate of the yearly value of 40s. above all charges, inasmuch as each portion of the mortgaged premises being liable to the whole of the yearly interest, such interest could not, for the purpose of conferring the franchise, without the consent of the mortgagee, be rateably apportioned upon the whole property contained in the mortgage. The barrister held that the interest could be so apportioned, and retained the name of the said *Saunders* on the register of voters.

Poulden for the appellant. The revising barrister had no power to inquire into the value of other lands than those in respect of which the party claimed the right of voting. How is an objector to ascertain the value of any other property than that which is described as the qualification of the voter? The mortgage applied equally to all the lands, and the interest cannot be apportioned to particular parts of them. [*Jervis C. J.* Then, according to your argument, if a man has an estate of 100,000*l.* a year, and there is a mortgage of 100*l.* upon it, and he qualifies in respect of one parcel worth 40s. a year, he has not a right to vote.] *Non constat* that the lands were not in different counties, or different divisions of a county. [*Maule J.* If a man has two parcels of land in two adjoining counties, each of them worth 4*l.* a year, and there is a mortgage of 3*l.* a year on them both, then you say that he can vote neither in the one county nor in the other.] If he has property in another county, the question of the value of that property would involve an issue which the revising barrister would not have jurisdiction to entertain, within the terms of the act of parliament.

Another point is, that the case does not state what the other land of the annual value of 50*l.* was. It might have been leasehold. [*Jervis C. J.* That objection was not made before the revising barrister. *Maule J.* The claimant in this case is substantially found to be seised of an estate worth 40*l.* a year, after deducting 15*l.* as interest upon a mortgage. The freehold land in respect of which the claim is made is one-eleventh part of the whole. Therefore he has an estate of which the annual value is the eleventh part of 40*l.*, which is more than 40*s.* a year. *Jervis C. J.* It would be a monstrous injustice to say that a man was not entitled to vote under these circumstances.]

No counsel appeared for the respondents.

PER CURIAM.

Decision affirmed.

1852.

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v.
Overseers of
CARISBROOKE.

BARROW, Appellant; and BUCKMASTER, Re- spondent. *November 20th.*

UPON an appeal from the decision of the revising barrister for the southern division of the county of Lancaster, the following case was stated by him for the opinion of the Court.

The appellant, and seven other persons, whose appeals tenants in common in fee, subject to the payment of 4*l.* 5*s.*, as their proportion of the chief rent upon the whole property. The grantors covenanted to pay their own proportion, and to indemnify the grantees against all losses by reason of the non-payment of the residue of the chief rent, viz. 9*l.* 16*s.* 7*d.*; and further covenanted that, in default of payment on their part, the grantees might enter and distrain on the other portion of the land, which was of a value sufficient to meet such residue of 9*l.* 16*s.* 7*d.* Held, that the rent-charge was apportionable, and that as the grantees could enforce contribution against the grantors for all beyond 4*l.* 5*s.*, that amount only was to be deducted in estimating the value of their interests with reference to the county franchise.

The owners in fee of a plot of land, subject to an original chief rent, payable quarterly, of 14*l.* 1*s.* 7*d.*, granted a portion of it to ten persons as

1852.

BALLOU
v.
BUCHMASTERS.

were consolidated, claimed to be entitled to a vote in respect of an undivided share of two freehold houses, which they each held. The ground upon which these houses stand forms part of a plot of land which was on the 31st of *July* last, and still is, charged with, and liable to, an original chief rent, being a perpetual yearly rent of 14*l.* 1*s.* 7*d.*, payable out of the same to an original grantor, with the usual powers of distress. The fee-simple of the plot of land in question, subject to the chief rent above mentioned, became vested in *Charles Duffield*, *James Lofthouse*, and *George Whitworth*, who granted that portion of it on which the two houses stand in fee-simple to the parties claiming to vote, and others, to the number of ten altogether, as tenants in common. The deed by which such grant was made recited that the said *Charles Duffield*, *James Lofthouse*, and *George Whitworth*, were seised of the fee-simple of the land on which the houses stand, "subject, nevertheless, with other adjoining hereditaments, messuages, and premises, now belonging to the said conveying parties, to a perpetual yearly rent of 14*l.* 1*s.* 7*d.*" The deed then went on to grant the land on which the two houses stood to the parties above-named, "subject only to a proportion — namely, the sum of 4*l.* 5*s.* — of the said yearly rent." The conveying parties then covenanted to pay the remainder of the said chief rent of 14*l.* 1*s.* 7*d.*, — namely, the sum of 9*l.* 16*s.* 7*d.*, and to keep the grantees indemnified against all losses, damages, expenses, and proceedings which might arise by reason of the non-payment of the said 9*l.* 16*s.* 7*d.*, and further covenanted, that if default should be made in payment of that sum, or any part thereof, and the grantees should be required to pay the same, or any part thereof,

that thereupon it should be lawful for the grantees to enter and distrain for so much as should have been required to be paid upon the remainder of the said plot of land. The grantees then covenanted with the grantors in a similar manner, that they would pay their proportion of the said chief rent of 14*l.* 1*s.* 7*d.* — namely, the sum of 4*l.* 5*s.*, and gave a similar indemnity and power of distress in case of default made. The objection to these parties was, that their freehold share of the two houses was not of the requisite value to confer a vote. If, for the purpose of conferring a vote, the annual value of the houses was to be calculated after deducting any further portion of the original chief rent charged and payable as above mentioned, then, the sum of 4*l.* 5*s.*, being the proportion above-named, the value of the houses would not be sufficient to confer a vote on the parties. If no further portion of the original chief rent than the said sum of 4*l.* 5*s.* was to be taken into account by way of deduction in ascertaining the value of the houses, and the houses were to be considered for that purpose as liable only to the payment of the sum of 4*l.* 5*s.*, the value of the houses would be sufficient to confer a vote on the several parties claiming. The revising barrister decided that as the land on which the houses stood was still liable, in conjunction with the rest of the plot, to the whole chief rent of 14*l.* 1*s.* 7*d.*, though the parties had a collateral indemnity against the payment of more than the above-mentioned portion of it, the value was insufficient, and he disallowed the votes, and removed the names from the register.

1852.

BARROW
v.
BUCKMASTER.

Byles Serjt. (*Aspland* with him), for the appellant,

1852. (November 17th). This case very much resembles
BARROW *Moore v. The Overseers of Carisbrooke* (a). It was there
 v. held that a mortgage may be rateably apportioned, and
BUCKMASTER. it is submitted that, for the purpose of estimating the
 value of the property, there is no essential distinction
 between a mortgage and a rent-charge. If an estate in
Kent worth 500*l.* a year, upon which there is a rent-
 charge of 100*l.* a year, were to descend to four sons,
 according to the custom of gavelkind, it would be mon-
 strous to say that none of the sons were entitled to a
 vote for the county. The ability of the freeholder to
 spend 40 shillings by the year out of the rents and pro-
 fits of his freehold, after satisfying all charges thereon,
 is made the test of his right to vote by stat. 8 *Hen.* 6.
c. 7.; 10 *Hen.* 6. *c.* 2.; 18 *Geo.* 2. *c.* 18. *s.* 5. The
 question then is, what the land is worth to the owner
 after all the legal remedies in respect of it have been
 exhausted. Between the terre-tenants there would sub-
 sist a right to contribution in equity, and it is appre-
 hended at common law also. In the case of a rent-
 service, if a lessee assigned to several assignees, there
 would be at law an apportionment of the rent, even be-
 tween the lessor and the assignees of the term. The
 point was raised, though not decided, in *Curtis v.*
Spitty (b); but the opinion of the Court seems to have
 been that at all events in debt, if not in covenant, an
 action would be maintainable for a portion of the rent
 by the lessor against one of the assignees. The autho-
 rities, both at law and in equity, are collected in *Story's*
Equity Jurisprudence (c). The result is that at law, or
 at all events in equity, the grantees in this case might

(a) *Antè*, p. 233.(b) 1 *Bing. N. C.* 756.(c) *P.* 380.

enforce contribution against the grantors, even if there were no covenant to indemnify, and no power of distress were reserved to them. Committees of the House of Commons have decided, as the Court did the other day (*a*), that a mortgage is apportionable (*b*); and there is no difference in principle between 14*l.* 1*s.* 7*d.* payable as interest upon a mortgage, and a rent-charge to that amount. It is submitted, therefore, that the revising barrister was wrong in removing the names of the claimants from the register.

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Cowling for the respondent (November 20th). The decision of the revising barrister was correct. Before the stat. 8 *Hen.* 6. c. 7., the qualification of a voter was freehold property of any value or however charged, but that act introduced a restriction on this general right, limiting the franchise to those freeholders whose freeholds were of the annual value of 40 shillings over and above all charges. The stat. 18 *Geo.* 2. c. 18. was a declaratory exposition of the former act, and established the rule that the only matters to be regarded were the issues out of the land. There is nothing in the statute to shew that the charges are to issue out of the land in question *ultimately*. When the statute speaks of "all charges," it must refer to all legal charges upon land, and it therefore includes a rent-charge which issues out of the land, although it overrides other lands also; *Gilbert on Rents*, 154. The power given to the sheriff by the stat. 8 *Hen.* 6. c. 7., to examine upon oath every voter "how much he may expend by the year," is a proof in favour

(a) *Anté*, p. 233.

(b) See the *Middlesex Case*, 2 *Peck*. 103; *Elliott on Registration*, 2nd ed. p. 84.

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of this argument. The legislature never could have intended that such an inquiry should be other than of a very simple nature. It will not be contended on the other side that the words, "what he may expend" are to be taken literally. The meaning is, "what he may be able to expend out of the issues of the land after the legal charges upon it have been provided for." That construction is the most consistent with the plain language of the statutes of *Henry* and *George II.*; *Heywood Co. Elections* (a). *Moore v. The Overseers of Carisbrooke* (b) does not bear upon the present question. The stat. 7 & 8 *Will. 3. c. 25. s. 7.* introduced a peculiarity with regard to a mortgage, and converted it from a legal into an equitable charge. Literally, therefore, it made a mortgage no charge at all; and so it was decided in the *Cricklade Case* (c). All the consequences of the charge being an equitable one follow; it is not primarily charged upon any particular part, but is equitably distributed over the whole of the property, and is only a charge on any particular part if there is a failure in payment of the interest.

Byles Serjt. replied. The observations of *Jervis C. J.* and *Maule J.* in *Lee v. Hutchinson* (d), have an important bearing upon this question. [*Jervis C. J.* It has appeared to me all along that *Lee v. Hutchinson* (d) is a decision of this case.] There the Court looked to the substantial value of the land. To test a claimant's right to vote, the revising barrister should look at the burdens and the profits of the estate, and ascertain whether, on

(a) P. 60. et seq. 2nd ed.

(b) *Antè*, p. 223.(c) *Heywood Co. Elec.* 146. 2nd ed.; 3 *Lind.* 470.(d) *Antè*, p. 159.

the balance, he has an interest in it, legal or equitable, of the value of 40 shillings a year. It is submitted that the appellant had such an interest, and that therefore his name ought to be restored to the register.

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JERVIS C. J. I think that the decision of the revising barrister in this case was incorrect, and that the claimants were entitled to vote. Although it is not stated in the case, it is admitted, and must be taken as the basis of our decision, that the residue of the land not covered by the houses out of which the franchise arises is insufficient to answer the balance of the charge beyond the sum of 4*l.* 5*s.* allotted upon it, and which must be considered as fairly apportioned. In this state of things it seems to me the amount which ought to be deducted from the value of the premises is 4*l.* 5*s.*, and not 14*l.* 1*s.* 7*d.*, which is distributed over and issues out of every inch of the premises which were the subject matter of the original demise. It is admitted that the question depends upon the construction of the statute 8 *Hen.* 6., as that statute has been slightly varied by subsequent statutes. By the original statute the voter must have a freehold of 40 shillings by the year above all charges, and the question is, what is the meaning of that provision? That must be gathered from other portions of the act, which are expository of this section, and by which we find that the sheriff is to examine the voter, or "chooser," as he is termed in the act, and ascertain "how much he may expend by the year." I apprehend, therefore, that the correct view is that taken by my brother *Byles*. It is not what charges the land is legally liable to in the first instance, but what, in the result, the claimant to a vote in respect of it

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would be able to expend. It is admitted that if the rent-charge were apportioned on the different plots, he would in this case receive more than 40s., and that, therefore, he might answer the sheriff and say that he expended more than 40 shillings by the year; but to this it is replied that he cannot do so because the land is liable to a charge of 14*l.* 1*s.* 7*d.*, which being divided amongst the freeholds, would leave him less than 40 shillings. But although it is not denied that he may be liable to pay 14*l.* 1*s.* 7*d.* out of the house in respect of the entire rent-charge, it is also admitted that he would be entitled to receive contribution from the others for their proportion of the rent-charge, so that when an account is taken between himself and those liable with him, he may safely answer that out of that land he is able to expend 40 shillings. This is, I think, the true construction of the act. I did not quite apprehend Mr. *Cowling's* presumed analogy between this case and the case of a mortgage, because it seems to me that when an equitable estate is substituted for a legal one—as by the statute of *Will. 3.*, it is intended that it should stand in the same position as the legal one. It is to be an equitable estate of the same value as the freehold estate. In the *Carisbrooke Case* (a), decided here the other day, the Court held that, in the case of an equitable estate, we are to look, not at the actual legal charge, but at the substantial value which remains after all the remedies are exhausted; and I apprehend the same rule must apply to a legal estate. The case of *Lee v. Hutchinson* (b) establishes the same proposition. In that case the Court adopted the rule of looking to the substantial

(a) *Antè*, p. 233.(b) *Antè*, p. 159.

position of the party, and to the substantial value resulting to him from the property after all legal remedies and rights had been exhausted, and it therefore held that there the claimant was not entitled to vote, because, although the estate was of the value of 5*l.*, it was not an estate out of which he could expend 40 shillings by the year above all charges, since he had to pay with the one hand what he received with the other. So here, if the claimant had to pay the whole charge, he would not be entitled to vote, but he is entitled to contribution, by which, in the end, he will receive from the land more than 40 shillings. He has, therefore, 40 shillings a year out of the land above all charges, and is entitled to vote, and his name and that of the others whose appeals are consolidated with his must be restored to the register.

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MAULE J. I am of the same opinion. I think that this claimant is a person who within the statute 8 *Hen. 6.*, restraining the old common law, may expend 40 shillings by the year. It has been pointed out by my brother *Byles*, and is not disputed by Mr. *Cowling*, that notwithstanding his liability to be distrained on for 14*l.* 1*s.* 7*d.* per year, the claimant may by means which he may put in force, enable himself in any year to expend upwards of 40 shillings out of this land. He therefore seems to me to satisfy the requirements of the statute of *Henry 6.* What Mr. *Cowling* says with respect to that is, that the statute means, not that he must be able to expend 40 shillings after enforcing all the rights he may have in respect of the land, but that it means he must have 40 shillings beyond anything which may be primarily charged upon the land. Mr. *Cowling*, however,

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has shown no sufficient reason for any such artificial construction, and I think the words of the statute are intended to exclude it. They are not words importing any particular estate; they are not technical words, but they are words of a popular nature, and descriptive of an inquiry to be made by a ministerial officer, the sheriff, upon an examination of the chooser. The words are, "how much he may expend by the year," and words less technical than these I cannot conceive. If I say I may expend by the year 40 shillings, and you say, no, because I may be distrained upon for 14*l.*, my reply is, yes, I can, because I can get contribution from the other persons, and still be able to expend 40 shillings by the year. The main argument of Mr. *Cowling*, and which, I think, has no bearing at all on the question before the Court, turned upon the statute of *Will. 3.*, which takes away the right of voting from mortgagees and trustees not in possession; but the scope of that argument, as far as I can understand it, does not apply to the general question whether this person can vote or not, but to a supposed analogy between this case and that of a mortgagor claiming to vote; but that analogy is not a valid one, and, therefore, if the argument was correct, still it would leave the argument upon the construction of 8 *Hen. 6.* untouched. That argument turns upon the mode of dealing with the statute of *Will. 3.* That statute says, the mortgagor shall vote, and that, says Mr. *Cowling*, is equivalent to turning the equitable interest into a legal one, thus construing the statute in effect as if it said, henceforth the interest of the mortgagor in his land shall for election purposes be treated as a legal interest, and the mortgagee's right to his interest, which is now a legal charge on the land,

shall be an equitable interest; not as between him and the mortgagor, but for election purposes. Then, having got, not the thing, but the word only into the act, he says, the section is to be dealt with in reference to the word "equitable," and thus it is that the charge is equitably distributed over the whole land. I think that this mode of dealing with a statute is altogether inadmissible, for you cannot substitute for the actual words used some others capable of a particular meaning, of which the actual words are not capable, and then construe the statute as if it contained the substituted words. Even if Mr. *Cowling's* argument were valid, it would only detract from the authority of some election cases which have been cited. But that would not diminish the authority of *Lee v. Hutchinson (a)*, which bears a strong analogy to this case. The 8th *Henry 6.* certainly intended to confer the franchise on persons who had a certain position in society with respect to property. That statute was modified by the statute of *Will. 3.*, and taking these statutes together, the thing to be looked at is, what is the ability of the claimant arising out of the land after his rights and liabilities have been enforced respecting it.

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WILLIAMS J. I am of the same opinion. Having regard to the statutes and cases bearing on this subject, I think we ought not to look further than the amount of charge which can ultimately fall on the terre-tenant, and with respect to the land before us, it appears that when all rights and contributions have been enforced,

(a) *Antè*, p. 159.

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any amount this person can be called upon to pay, will not diminish his interest below 40 shillings.

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TALFOURD J. I think the "charges" in the statute are to be understood to mean such as leave the parties equitably entitled the ability to expend 40 shillings after they are satisfied. The case of *Lee v. Hutchinson* (a) is in effect the precise converse of this, and it involves the same principle as that which we have recognised in *Moore v. The Overseers of Carisbrooke* (b).

Decision reversed.

(a) *Antè*, p. 159.

(b) *Antè*, p. 233.

November 25th. FEDDON, Appellant; and SAWYERS, Respondent.

A person whose name was on the list of freemen entitled to vote in the election of members for the city of Carlisle, objected to the name of another freeman being retained on that list, and described himself in his notice of objection as being "on the list of freemen for the city." It appeared that besides the list of freemen entitled to vote for members of parliament, there was a list called the Freemen's Roll, kept for municipal purposes. *Held*, per *Jervis C.J.*, *Williams J.*, and *Talfourd J.*, *dissentiente Maule J.* that the description given of himself by the objector was a sufficient compliance with the requirements of the stat. 6 *Vict.* c. 18. s. 17:

THE following case was stated for the opinion of the Court by the revising barrister for the city of Carlisle:

John Sawyers, whose name was on the list of voters for the said city for the time being, objected to the name of *Thomas Feddon* being retained on the list of freemen entitled to vote. The name of *Thomas Feddon* was on the list published by the town clerk of persons entitled to vote. Notice of objection had been duly served on the town clerk and on *Thomas Feddon*; but the notice of objection which had been so

served on *Thomas Feddon* was in the words and form following:—

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“Form of notice of objection to be given to parties objected to.

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“To Mr. *Thomas Feddon*, of *Clushwaite*,

“I hereby give you notice that I object to your name being retained on the list of persons entitled to vote in the election of members for the city of *Carlisle*.

“Dated the 23rd day of *August*, 1852.

“Signed, JOHN SAWYERS,

“Butchergate, *Carlisle*.

“*On the list of freemen for the city of Carlisle.*”

It was proved that there are several townships in the city of *Carlisle*, with separate overseers, and that the overseers of the different townships make out and publish different lists of persons entitled to vote in the election of members for the city, in respect of the occupation of property within the city; and further, that the town clerk makes out and publishes in each year a list of freemen entitled to vote in the election of members for the city. The heading of the said list of freemen is in manner and form following:—

“The list of freemen of the city of *Carlisle*, entitled to vote in the election of members for the said city.”

It is the duty of the town clerk to keep printed copies of the said list for sale, and he is in the habit of selling such copies. There is kept in the town clerk's office another list of the freemen of *Carlisle*, which is the list or roll of all the freemen of the city, made and kept in pursuance of the municipal corporation act; and the proper and ordinary name of such list is “the freemen's roll.” Such list is not published, though it may be inspected at the town clerk's office, and it is in

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no way connected with the lists made of persons entitled to vote in the election of members for the city. There is but one list of the freemen of the city relating to the election of members for the city, which is the list made and published annually by the town clerk, as above mentioned. The name of *John Sawyers* was in fact upon that list of freemen.

It was contended on behalf of the said *Thomas Feddon*, that the notice of objection was insufficient, because the objector had not therein described himself as being a voter for the city, and had not shewn upon the face of the notice that he was a person entitled to object to the name of the said *Thomas Feddon* being retained on the list of voters, and had not shewn that he was a person to whose objection the said *Thomas Feddon* was bound by law to pay attention. It was further contended, that the notice was insufficient, because the objector had not described himself as being on the list of freemen entitled to vote for the city, but only as being on the list of freemen for the city, and that the notice was not according to the form in the schedule, 6 *Vict. c. 18.*, and that the said notice tended to mislead the said *Thomas Feddon*, and that the said *John Sawyers* had not duly exercised the power conferred upon him by the statute, 6 *Vict. c. 18.* It was contended on behalf of the said *John Sawyers*, that he had duly exercised the powers conferred upon him by law; that the notice was sufficiently accurate; that the voter could not be misled, and that there was only one list of freemen, namely, the list of freemen entitled to vote in the election of members for the city to which any reasonable person would refer on receiving such a notice. The revising barrister held that the

notice was sufficiently accurate, and that the said *John Sawyers* duly exercised the power conferred upon him by law, and the said *Thomas Feddon* being unable to sustain his right to be on the list of voters for the city of *Carlisle*, his name was struck out of the list.

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Twenty-eight other cases were consolidated with the above.

The case was argued (*November 17th*) by *S. Temple* for the appellant, citing *Edsworth v. Farrer* (a); and by *Mellor* for the respondent, who referred to *Wansey v. Perkins* (*Quigley's case*) (b), and *Tudball v. The Town Clerk of Bristol* (c). Their arguments will sufficiently appear from the judgments afterwards delivered by the judges, who differed in opinion when counsel had been heard.

Cur. adv. vult.

JERVIS C. J. In this case, in which the Court took time to consider, in consequence of a difference of opinion among the judges who heard the arguments, we have considered the matter again, and I am sorry to say that we are still not unanimous. I proceed to state the reasons which induce me to think that the decision of the revising barrister was correct. The question in this case arose upon the sufficiency of a notice of objection to *Thomas Feddon*, signed by *John Sawyers*, who described himself as being "on the list of freemen for the city of *Carlisle*." It is said that the objector should have described himself to be "on the list of freemen entitled to vote in the election of members of parliament for the city of *Carlisle*," or that he

(a) *Anté*, Vol. I. p. 517.

(b) *Anté*, Vol. I. p. 235.

(c) *Anté*, Vol. I. p. 7.

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should have shewn himself to be, somehow or other, a voter for the city. On the other hand it is said, that he has sufficiently described himself as being on the list of voters for the city. It was contended during the argument, and is not disputed, that by the 17th section of the stat. 6 *Vict. c. 18.*, no one can object but a person whose name has been inserted in a list of voters for a city or borough. The party objecting, therefore, must bring himself within that description, and the statute gives a form, No. 11. Schedule (B), for his guidance, according to which, "or to the like effect," the notice of objection is to be framed. That form, however, is applicable, not to the objector in this case, who is a freeman, but to a person who is on the householders' list. The question turns, therefore, upon the construction to be put on the 17th section of the act, and I think the 101st section gives a key to the interpretation of the former clause. The 101st section says, in substance, that no notice of objection is to be held bad if the matter is so stated in it as to be commonly understood. And I think the fair meaning of this section is, that we are not to put a mere technical and critical construction upon the instrument, but to look at it in a common-sense point of view; and if, on looking at the notice of objection as a man of plain and ordinary intelligence, having regard to the subject-matter, would look at it, we see that the objector does describe himself so as to be commonly understood to be a person entitled to object, it seems to me that the notice of objection is good. Now, there are two classes of lists in the city of *Carlisle*. The one includes the list of freemen entitled to vote; the other class contains the list of householders made out by the overseers of

the different townships. I can well understand why the act requires, in the latter case, that the notice of objection should state, not only that the objector has a vote as a householder, but in what parish he is a householder, because the party objected to is thus at once referred to a particular list, in order that he may ascertain whether the objector is qualified to object. But that reason does not apply to freemen objecting. There is only one list of freemen published by the town-clerk, and the persons named in that list are entitled to vote at elections for members of parliament. There is only one statutory form of notice of objection, and that does not apply to freemen. But, having regard to the subject-matter of the notice of objection in the present case, which applies only to the exercise of the parliamentary franchise, I think that if the notice were read as it would be by a person of ordinary intelligence, the objector could not be otherwise than understood to be a freeman on the list of voters for the city of *Carlisle*, seeing that the notice describes him to be on the list of freemen for the city. On this short ground, I think we should take a liberal view in construing the 17th section of the act, and looking at it in that way, it seems to me that the notice is so expressed as to be "commonly understood" as having been made by an objector who is on the list of voters. I quite agree that if we were bound to look at the notice critically and technically, and to draw inferences against the objector, the statement in the notice is quite consistent with the objector's being on the roll of freemen merely in the enjoyment of municipal rights; but it seems to me that we ought to put a liberal construction upon the instrument, and when we con-

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sider that the objection applies to the exercise of the parliamentary franchise, we cannot but infer that the objector meant to describe himself as a person entitled to object. Mr. *Temple* urged that, by holding this notice to be sufficient, a party would be called upon to do what he ought not to be obliged to do, namely, to make inquiries for the purpose of discovering on what list the objector was. That argument was strongly pressed in *Wansey v. Perkins* (*Quigley's case*) (a), but the Court did not consider the difficulty to be insurmountable. They said that it was not unreasonable that the voter himself, or some other party for him, should ascertain to what list the notice of objection referred. In a case like this, if there were any ambiguity, the party objected to might be fairly required to ascertain whether the name of the party giving the notice was on the list of freemen entitled to vote in the election of members of parliament. But it seems to me that no inquiry would be necessary here, because there is no ambiguity, for I think that no person of ordinary intelligence, reading the notice in a fair and liberal spirit, could doubt that the party giving it described himself as a parliamentary elector. For these reasons, I am of opinion that the notice of objection was sufficient.

MAULE J. It appears to me that the notice of objection given in this case was not sufficient. The 17th section of the act confines the power of objecting to persons whose names are on the list of voters, and this right is conferred upon such persons only when they

(a) *Antè*, Vol. I. p. 235.

proceed, in the manner pointed out in the act, to put a voter to the proof of his qualification. The right is annexed, by force of the statute, not to persons to whom it is naturally incident, but to persons to whom the legislature thought fit to give it. Such persons are required, by section 17., to give a notice of objection in the form pointed out in the schedule, or "to the like effect," and the latter words of the form in the schedule are, "*A. B.* on the list of voters for the parish of —." I believe there is no difference of opinion on the Bench, that by the words "to the like effect," the act meant to shew that the form was given merely as an example. The notice is intended to point out that the objector is on a list, and on what list, of voters. There is no controversy that the correct form pointed out by the words of the statute as applicable to the case of a person who is not upon the overseers' list as a householder, but who is upon the list of freemen, ought to shew that he is on the latter list. It is agreed that this is the effect which the notice ought to have. My Brothers admit that, to make the notice a good one, it ought to point out that the person making the objection is upon the list of freemen entitled, as such, to vote. Now, what the objector does say in this case is, that he is "on the list of freemen;" he does not say in terms that such freemen are "entitled to vote," but it is conceded that, to make the notice good, he must say so "in effect." The question, then, is, whether this notice does in effect inform the person to whom it is addressed, that the objector is on the list of freemen entitled to vote. He says that he is "on the list of freemen for the city of *Carlisle*." These words of themselves, standing alone, convey no assertion of a right to

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vote, or of being on a list of persons entitled to vote. But then it is said that, taking the surrounding circumstances into consideration, and the rule which (as alleged) is laid down by the 101st section of the statute, the words "on the list of freemen for the city of *Carlisle*," do impliedly contain an assertion that the person is on the list of freemen entitled to vote for members of parliament. That there may be a list of freemen for the city, which is not a list of freemen who have a right to exercise the parliamentary franchise nobody denies; and it is found by the revising barrister that there is such a list. But it is argued, that though the objector describes himself as being upon such a list, it would be "commonly understood" that he referred to the list of freemen entitled to vote for members of parliament. These being the only grounds for suggesting that a construction should be put on the words which would not belong to them if taken by themselves, the question is, whether the reasons assigned be sufficient for putting such a construction upon them. The revising barrister seems to have relied a good deal upon a fact which is found in the case, but which was not much relied upon during the argument, and which the Lord Chief Justice, in his judgment, did not expressly rely upon, viz. that there are certain lists of persons made out and entitled in a certain way, and that there exists a list of freemen called "The Freemen's Roll." These circumstances, I think, cannot be legitimately taken into consideration; and if they be taken into consideration, I do not think that they ought to lead to the conclusion drawn from them by the revising barrister. The words in the notice of the objection are perfectly unequivocal and intelligible, and con-

tain, coupled with the name of the objector, an assertion that he is on a list of freemen for the city. That is all which they import. I do not think that these unequivocal words can be construed to signify that the objector is upon the list of persons entitled to vote for members of parliament. Their meaning cannot be restricted by the extrinsic fact that there is a list which contains the names of part of the freemen only. The rule of construction contended for, if carried out to the length short of which we could not properly stop, would have the effect of restricting words, however unequivocal, to a particular sense. It seems to me, therefore, that the occasion on which these words were used cannot be called in aid to restrict the plain meaning belonging to them, when read by a person who is conversant with the *English* language, and who has no desire to put any other construction upon them than that which belongs to them of themselves. If they be so read, nobody for a moment would doubt that the objector does not affirm himself to be on any list of voters; he affirms himself to be on a list of freemen, which may be a list of voters, or may not. But it is said that the other construction—that, namely, which makes a “list of freemen” and a “list of voters” convertible terms—is aided by the 101st section of the act, and that we are to look at the matter in a plain, common-sense point of view, and not technically nor critically. Now, nobody looks at the matter *technically*. Nothing technical, or belonging to any particular art or science, has been suggested as affording a rule of construction upon this occasion. The words are to be looked at, not as words belonging to the art of law or any other art, but as words subject to the rules which govern the use of the *English* language.

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I think, however, that they ought to be looked at *critically*. To deal with words critically, is to apply your judgment to ascertain their meaning. The Lord Chief Justice himself, while protesting against a critical construction, exhibited, as he always does when the occasion calls for it, great critical power in his judgment. He exercised a power of constructive criticism, and applied all the rules of such an art to the matter in hand. The criticism was verbal criticism, too, for the question is, what is the sense of the words "on the list of freemen?" It is said that there is a section of the act (§ 101.) which enables us to impose upon the words a sense different from that which, without using that section, I have attributed to them. Now, I do not myself believe that the 101st section does afford the rule of verbal criticism which has been extracted from it. I think that the rule to be deduced from that section is, that where a document contains a substantial allegation of the matters which it is required to contain, if the language in which it is expressed be not perfectly accurate, the inaccuracy may be got over. Now, does that rule apply to the present case? It certainly does not. There is no inaccuracy in the language used. The objector affirms of himself that he is on the list of freemen; there is nothing inaccurate in that. There is, what may be quite enough for his purpose, such a thing as a list of freemen; he affirms that he is on that list. He may have some purpose in affirming that; he may choose to affirm it; he may be desirous of trying whether it is sufficient to affirm that he is on the list; but whatever his object may be, that is what he says of himself: he says, "I am on the list of freemen," — a perfectly intelligible proposition. And if those words were used

by him upon an occasion when it would be necessary for him to shew that he was on the general list of freemen, and when it would not be sufficient for him to state that he was on the list of freemen entitled to vote for members of parliament, it would have been hopeless to urge in argument that, by any rule of constructive criticism, he was not on the general list of freemen for the city, but only on the list of such freemen as were entitled to share in the privilege of returning two members to parliament. If the construction contended for by the respondent be adopted, I do not know where we are to stop. People, it seems, are to be taken to know that to be "on the list of freemen" means, to be on the list of freemen entitled to vote for members of parliament; and, therefore, we are to restrain the meaning of the words used, and impose upon them a signification which they do not bear when standing alone. I think that the words should be looked at in the spirit of the act, which evidently intends that the power of objecting should be exercised by a certain class of persons only, and it directs that the objector should affirm that he belongs to that class. If any thing else were intended, I do not see why saying "on the list," without saying on what list, would not do. If words be used on an occasion when they cannot have any meaning at all, unless restricted in their signification, then they must be so restricted; but that is not the case here. To give the words their natural sense would involve no contradiction, no inconsistency, and no inconvenience. They affirm that the objector is on the list of freemen for the city of *Carlisle*; they do not affirm that he is on the list of freemen entitled to vote for members of parliament; and I therefore think that they do not make

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1852. the affirmation which is the essence of the notice required by the act, and consequently, that the decision of the revising barrister was wrong.

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WILLIAMS J. I agree with the Lord Chief Justice, and I think that the revising barrister was right in holding the notice of objection to be sufficient. Having regard not only to the terms of the notice, but, as we are bound to look, to the subject matter of it, and the occasion of it, I confess I think that no person of ordinary intelligence could fail to understand that the phrase in the notice "On the list of freemen for the city of *Carlisle*," referred to the list of freemen entitled to vote, and not to the freemen's roll which is kept in pursuance of the Municipal Corporation Act. Therefore in my opinion there is no inaccuracy of description; but, if there be, that inaccuracy is cured by the 101st section of 6 *Vict. c. 18.*; for, in my judgment, the question to be determined is, whether the notice of objection was given in such a way as to be commonly understood.

TALFOURD J. I concur with the Lord Chief Justice in thinking that the revising barrister was right in his decision. The 17th section of the act requires that the objector should state his title to object. The end aimed at by that provision in the statute is, that he should point out to the person to whose vote he objects the list upon which his name is to be found, in order that the party objected to may go to that list, and see whether the person who objects to his vote has a right to do so. The objector in the present case could not comply with the form given in the schedule, because it was not applicable to the title which he possessed, but by saying

that he was "on the list of freemen," he must be taken to have meant, that he was on such a list of freemen as entitled him to raise the objection. If there had been no other list of freemen than that of freemen entitled to vote for members of parliament, I think we are all agreed that the notice would have been sufficient, but the ambiguity in it is entirely occasioned by the extrinsic fact, that there is another list of freemen to which the objector is supposed to allude; namely, "The Freemen's Roll." By describing himself as "on the list of freemen," the objector seems to point to the list of freemen who are parliamentary voters, rather than to the roll of freemen. Taking notice, therefore, of the extrinsic circumstances of the case, and balancing the one against the other, I think we may fairly conclude that the person receiving the notice would perfectly well understand what it meant, because it would be idle for the objector to describe himself as being on the municipal list alone. I am, therefore, of opinion that the decision ought to be affirmed.

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Decision affirmed.

CASES

ARGUED AND DETERMINED

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IN THE

COURT OF COMMON PLEAS,

UNDER THE STAT. 6 VICT. c. 18.

IN

MICHAELMAS TERM,

IN THE

SEVENTEENTH YEAR OF THE REIGN OF VICTORIA.

November 17th. MOORHOUSE, Appellant; and GILBERTSON, Respondent.

The revising barrister expunged from the register of a county the name of a claimant who was joint owner with others of certain

AT a Court held before *Edward Rushton, Esq.*, Barrister-at-Law, duly appointed to revise the list of voters for the northern division of the county of *Lancaster*, for the revision of the list of voters for the

freehold property, let to tenants at certain rents, on the terms that the owners should pay the poor rate and certain other rates, including a water rate and a rate imposed by a local Board of Health, to which the tenants, in respect of their occupation, were liable. If the owners had not agreed to pay the amount of those rates, the rent obtained from the tenants would have been diminished by that amount. The claimant's clear share of the sums actually received from the tenants, after the deduction of the necessary expenses incidental to the property, amounted to 40s. per annum; but after the further deduction of the sum paid in respect of the rates for which the tenants were legally liable, but which the owners by the contract of letting were bound to pay, his clear share amounted to less than 40s. *Held*, that the claimant's name was rightly expunged from the register, inasmuch as his estate was not of the yearly value to him of 40s.; and that the question whether his estate was of the clear yearly value of 40s. over and above all costs and charges payable out of or in respect of the same within the meaning and intention of the 12 Geo. 2. c. 18. ss. 5, 6., could not arise.

township of *Preston*, *John Garlick*, junior, duly objected to the name of *Charles Edward Rawlins* being retained on the said list. The facts of the case were as follow : —

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The name of *Charles Edward Rawlins* appeared on the list in the following form : —

Charles Edward Rawlins.	No. 4. Blackburn Terrace, Liverpool.	Undivided share of freehold houses.	Nos. 115, 116, 117, North Road; No. 5. Ann Street.
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The appellant and others were joint owners of freehold property in *Preston*. The property was let and was rated to the poor and other usual tenants' rates, which included a water rate and Local Board of Health rate. It was part of the terms of the letting that these rates should be paid by the owners, and they were so paid. If the owners had not agreed to pay the amount of those rates, the rent obtained from the tenants would have been diminished by that amount. An agent had been appointed on the behalf of the owners who managed the property, collected the rents and, after paying all the necessary expenses incidental to the property, including the tenants' rates, divided the balance by the number of owners, and transmitted to *Charles Edward Rawlins* and the other persons interested the amount of their respective shares. After paying the other necessary expenses, and before paying the tenants' rates, the agent had each year a sum in hand which, if divided by the number of owners, would give 40s. clear as the share of *Charles Edward Rawlins* and the others respectively. After paying the tenants' rates, the sum remaining in the agent's hands would, if divided by the number of owners, give as

1853. the share of *Charles Edward Rawlins* and the others respectively a sum less than 40s. by precisely the amount of the rates; so that, although the agent received from the tenants on account of each owner more than 40s. a year in the first instance, that sum underwent two reductions whilst still in his hands. In the first place, it was reduced to 40s. by the payment of expenses other than the tenants' rates; in the second place, it was reduced below 40s. by the payment of the tenants' rates themselves, or any one of them; and the sum actually transmitted each year to *Charles Edward Rawlins* and to the other owners respectively as their resulting share was less than 40s. by the amount of the tenants' rates. Upon this state of facts it was contended on behalf of the voter that, inasmuch as the water rate and the Local Board of Health rate were mere voluntary payments on the part of the owners, and inasmuch as by the stat. 18 Geo. 2. c. 18. s. 6. the parochial rates were not to be deemed charges payable out of the property, therefore neither the one nor the other ought to be deducted in estimating its annual value. On behalf of the objector it was urged that, though not charges payable out of the property, the parochial rates were nevertheless payments which diminished its annual value to the owners, and that the water rate and the Local Board of Health rate were not mere voluntary payments, but payments which the owners must of necessity make in order to procure from the tenants the stipulated amount of rent, and that, therefore, all these rates ought to be deducted. The Revising Barrister decided that the annual value of the property in question to *Charles Edward Rawlins* and the other owners respectively, did not amount to 40s.;

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that in estimating such annual value to *Charles Edward Rawlins* and the other owners respectively there ought to be deducted, under the circumstances, the amount paid for the tenants' rates, including, as before mentioned, the parochial rates, the water rate, and the Local Board of Health rate; and that the real value of the property to the voter, therefore, was not 40s., but that sum *minus* the amount paid for the tenants' rates. He expunged the name from the list.

The names of 104 other persons were also erased from the list on the same ground, but the appeals were ordered to be consolidated.

Edward James for the appellant. The decision of the revising barrister was wrong. The parochial rates, the water rate, the rate imposed by the Local Board of Health, ought not to have been deducted for the purpose of ascertaining the value of the appellant's freehold in order to determine his right to a vote for the county. The question for this Court is whether, within the meaning of the 18 *Geo. 2. c. 18. s. 5.*, these rates are charges payable out of or in respect of the freehold estate on which the appellant rests his claim. That section enacts that no person shall vote in any election of the Knight of the Shire to serve in parliament for *England*, without having a freehold estate in the county for which he votes, of the clear yearly value of 40s. over and above all rents and charges payable of or in respect of the same. The statute does not define positively the word "charges:" but the 6th section contains a kind of negative definition of it, by directing that "no public or parliamentary tax, county, church or parish rate or duty, or any other

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1853. tax, rate, or assessment whatsoever to be assessed or levied upon any county, division, rape, lathe, wapentake, ward or hundred, is or shall be deemed or construed to be any charge payable out of or in respect of any freehold estate within the meaning and intention of this act." The 5th section, therefore, and the 6th ought to be read together thus :—no person shall vote in any such election without having a freehold estate in the county for which he votes of the clear yearly value of 40s. over and above all rents and charges, except any public or parliamentary tax, county, church, or parish rate or duty, or any other tax, rate or assessment whatsoever to be assessed or levied upon any county, division, rape, lathe, wapentake, ward or hundred." [*Jervis C. J.* The case does not find the actual value, but treats payment as the test of value. What would the tenant have paid to the appellant, if the tenant had had to pay his own rates? just so much less than the sum he actually paid as the rate may amount to. Treating then the payment as the test of the value, the value is under 40s. That might have been so if the act had not contained the provisions of the 6th section; but in this case the value, that is, the payment to the appellant, is not less than 40s., without deducting charges payable in respect of the estate which the 6th section says shall not be deemed charges for the purpose under consideration. [*Maule J.* The meaning is that nothing is to be considered which the freeholder has to pay in respect of his own enjoyment. A man does not the less expend 40s. a year because he applies part of it to pay his taxes. If the legislature should say that a man with 40s. a year should pay 40s. a year as a tax, the

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man would still enjoy the 40s. though he paid the tax.] The case may be supposed of a man having two freehold estates in adjoining parishes and adjoining counties, one occupied by himself and the other occupied by a tenant; the former subject to rates amounting to 2s. a year, the latter not subject to any rates: and the value of each 40s. a year. For the latter he would have a vote under section 5., without calling in aid section 6.; for the former he would have a vote by calling in aid section 6. If it be further supposed that, in another year and in the parish in which the estate is occupied by the tenant, rates to the amount of 1s. are imposed, which the freeholder consents to pay; that estate is plainly worth more to him than the estate which he occupies, and if the one is worth 40s., the other is worth more than 40s., the deductions for rates being in each case the same in principle, and the variance being only one of amount. This 6th section would be violated by deducting the 2s. which the freeholder pays in respect of the estate which he owns and occupies; and it would equally be violated by deducting the 1s. which he pays in respect of a tenant's occupation of that estate which he owns without occupying. [*Jervis C. J.* In the latter case the value to the landlord is only 39s.] That cannot be unless the rates be taken into consideration, and they cannot be taken into consideration without violating the 6th section. [*Maule J.* The amount of 40s. must be reached, after deducting all charges payable out of or in respect of the estate. That means, out of the interest which confers the vote, which, in this case, is the rent he lets the land at. In the case supposed,

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he lets it at 39s. only. Suppose the number of paupers in the parish to be such that the tenant said to the landlord, "If I am to pay the rate, I can only give you 39s.," and that the rates amounted to a shilling; the value of the landlord's interest would not be 40s. Unless the value reaches 40s. it is unnecessary to inquire into deductions. *Jervis C. J.* Here the amount of 40s. is not reached; because the landlord gets 40s., not all for himself, but subject to the payment of the rates which the tenant ought to pay.] That is, he gets 40s. and out of it has to pay one of the charges mentioned in the 6th section. [*Maule J.* The 6th section applies to charges affecting the enjoyment of the interest; such as the income-tax or any tax specifically laid on the rent. A deduction is not to be made in respect of payments made to defray such charges; they are to be treated as if they were spent in the support of his family. *Jervis C. J.* You apply the 6th section too early. You must first make out the clear yearly value of 40s. When you have got that, any charge within the meaning of the 6th section is not to be deducted. *Maule J.* And you have not got the 40s.] When in the cases put the landlord occupies, he has 40s. and must pay the rate of 2s., that is, he has 38s. and 2s., which latter sum is to be expended in the rate; when the tenant occupies, the landlord has 39s. and 1s. which is to be expended in the rate. If the 6th section is applied he has a vote in both cases; if the 6th section does not apply to both cases, it applies to neither. [*Maule J.* If I let at 40s. per annum, but am to furnish the tenant with a ton of coals per annum as well, that agreement is worth 40s. per annum to the tenant; but my interest under the agreement is not 40s.

per annum. It is the same thing in effect if I am annually to spend the value of a ton of coals in paying rates for the tenant. *Jervis C. J.* If the landlord gets 38s. for himself, and 2s. to pay to the parish, and yet gets 40s. to dispend for himself, it is a very odd way of having 40s. to dispend for himself.] Were he himself the occupier, he would have that sum to dispend for himself notwithstanding the rate. [*Maule J.* The payment of the rate would then be a payment of something for enjoyment of occupation. It is a mode of enjoying the occupation. He dispend 2s. for the benefits which the rates purchase, and 38s. in some other way, and so he enjoys 40s. A vote is conferred by value, not by mere reception.] The first thing is to get the actual value ascertained. The actual value between landlord and tenant is 40s. That sum the tenant is willing to pay, even though there be no rate. That sum, therefore, is the value of the property before any rate is imposed. It is equally the value of the property after the rate is imposed; for the value is not altered by the imposition of the rate. Then having got a value of 40s. the only question is whether a rate payable out of it is to be treated for the purpose of the right to vote as a charge payable out of it within the meaning of the statute. The 6th section says that it is not. If to pay 2s. for rates due in respect of his own occupation is to dispend 2s. within the meaning of the statute, so as to make up with 38s. applied in some other way a dispend of 40s.; it is no less a dispend of 40s. to apply the 38s. for his general purposes, and the 2s. in paying by agreement a rate in respect of the tenant's occupation. The payment is in each case compulsory on the landlord; and in each

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case it is a payment to be excluded from the computation under the 5th section. [*Williams J.* My lord puts the case of a man receiving 38s. from the tenant for himself, and 2s. to pay to the parish for rates, so making his whole receipts from the tenant 40s. You must either contend that in such a case the value would be 40s., or else in every case where the landlord, in consideration of the rent, bargains to pay the tenant's rates, you must deduct the rates in order to ascertain the value.] The value is shown by the tenant's payment; and for the purpose of the vote, that value is not to be construed to be diminished by the payment of any rates. [*Williams J.* The 6th section is oddly worded for your purpose. Your contention, however, must be, that if the value to the freeholder is in fact 38s., but would be 40s. were there not certain rates to be paid, the value is to be construed to be 40s.] That is the appellant's contention.

The second point is whether the deduction in respect of "necessary expenses" ought to be considered. [*Maule J.* No point has been raised upon that for our consideration. It does not appear that the objection was made at the time; and we cannot send it back for that purpose.] The case is not sufficiently stated unless it be shown what these "necessary expenses" are.

Byles Serjt., *contra*, was not called on.

JERVIS C. J. The case is sufficiently stated. The statement is substantially that the rent is the value; and the rent is exactly 40s. if the claimant is entitled to add the rates paid by the tenant, but is exactly not 40s. if

the tenant's rates are to be deducted from it. I apprehend that the tenant's rates must be deducted, and, therefore, the real value is 38s. The meaning of the 6th section is not that the sum paid by or for the tenant in respect of rates is to be added to the sum paid by him for rent in order to make out the value; but that the value is to be ascertained without making deductions in respect of such charges, payable out of the landlord's interest, as are mentioned in that section. Here no deduction can take place; because, before the question of deduction arises, there must be an ascertained value of 40s., and the ascertained value is only 38s. Mr. *James* has not answered the question put, whether, if the landlord receives 38s. and the tenant pays 2s., the value to the landlord can be said to be 40s.? If this cannot be said, as it is clear it cannot, the landlord is not entitled to vote. I think, therefore, that the revising barrister was quite right, and that we must affirm his decision.

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MAULE J. I also think that the revising barrister was quite right. The question is not one of the deduction of charges, but whether the sum from which any deduction must be made amounts to 40s. I think that it does not. The interest of the claimant in the property is represented by what must be taken to be a fair rent; and that is 40s., subject to an agreement on his part to pay the charges to which the tenant is legally liable. His interest, therefore, is only 40s. subject to the payment of his tenant's rates, and not subject to any charge or tax upon it but what arises out of convention with his tenant. He cannot get at a rent of 40s.; but only at a rent of 40s. with an agreement by him to pay poor rate, water rate, and rate made by the Local Board

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of Health, for which the tenant is legally liable. The statute treats the occupier's duty to make such payments not as a deduction from the capacity to spend money, but as a mode of enjoyment; and, therefore, no deduction ought to be made in respect of such a charge. In the case of a tenant occupying land and paying rates, the payment is a mode of enjoying the property he occupies. He is called upon to pay a portion of what he gets from his occupation to support the poor, and that is treated by the statute as if he employed it for the support of his own family. The case has been pressed by Mr. *James* of the landlord occupying the land himself, and he says that when this is the case you cannot under this statute deduct the poor rate. Certainly not; because then the occupier would be the person who expended the interest derived from the land for his own purposes. It would be one mode of his enjoyment of the land. But then he says, where is the difference when the landlord lets the land and agrees to pay the poor rates out of the rent? He asks, ought the sum so paid for rates to be deducted? Yes, because it is clear that such a gross rent is not the proper criterion of value, and that the true rent is only got at by deducting something which the landlord has agreed to pay — which is the same thing as if he had agreed not to receive it. In this case, the landlord does not pay anything in respect of his own interest in the land as landlord, and, therefore, he does not himself enjoy the land; but when he pays the rates, he pays something which the tenant would have been liable to pay, and which, when paid by the tenant, is a portion of the tenant's enjoyment of the land. It is the same thing as if the landlord, instead of getting 40s. a year for the land, could only get 40s. if he agreed to

furnish coals for his tenant's stoves; or, as if the turn-pikes in the district being heavy, he could only let for 40s. a year, by consenting to pay his tenant's turn-pike tolls every market day, amounting perhaps to a shilling a week. It would be impossible in such a case to say that the value to the landlord was 40s. I think, therefore, that the revising barrister had no very difficult task in deciding this question, and that his decision was right.

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WILLIAMS J. I am of the same opinion. Mr. *James* is driven to admit that he must go the length of contending that a person would have a good vote who could merely assert, not that his interest was of the value of 40s., but that it would be of that value if it were not situated in a parish where taxes are so heavy. But that is not so. I think, therefore, the decision was right.

TALFOURD J. I am entirely of the same opinion.

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See (h) 2.

(c) *Notice of Claim.*

A county voter already on the register, but whose right of voting depends on the occupation of different lands from those there described, must send in a fresh claim to vote, describing the lands occupied in immediate succession.
Burton v. Gery. 4

(d) *Notice of Objection.*

(Description.)

1. The Registration Act, s. 7., does not say that the precise form of notice of objection given in the schedule thereto shall be followed; and the notice not being intended to contain a legal description, but only a reference, it is matter of fact for the revising barrister, whether the notice is so expressed as not to be calculated to mislead, and the Court is bound by his finding. *Lambert v. Overseers of St. Thomas, New Sarum.* 224
2. A new notice of objection must be made in respect of the fresh occupation, although the old description will, in terms, apply to both occupations. *Burton v. Allen.* 4
3. Whether a notice of objection describes, on the face of it, objector's place of abode, is a question of law; whether such description gives sufficient information to

the party objected to, is a question of fact on which the barrister's decision is final. *Sheldon v. Fletcher*.

Page 11

4. "On the list of freemen for the City," is a sufficient description of a freeman objecting under Registration Act, s. 17, to a person whose name was on the list of freemen entitled to vote for Members for a city; although there was a list called "the Freemen's Roll," kept under the Municipal Corporations Act for municipal purposes, as well as a list of freemen entitled to vote for Members. *Feddon v. Sawyers*. 246

(Direction and Address.)

5. The notice of objection left with a postmaster to be forwarded under the Registration Act, s. 100., must be in such a state that he can forward it without writing anything on it himself, by being addressed on the outside. *Birch v. Edwards*. 37

(e) Form of Notice of Objection.

1. The statutory form (Registration Act, s. 17, schedule B. No. 11.) of notice of objection, does not apply to freemen. *Feddon v. Sawyers*. 246
2. Notice of objection signed "J. F., of 5. *Sherborne Street*, on the list of voters for the parish of *Cheltenham*." Held, *primâ facie*, a sufficient description of objector's place of abode, as, under all the circumstances of the case, *Sherborne Street* must be taken to mean *Sherborne Street, Cheltenham*. *Sheldon v. Fletcher*. 11

3. A notice of objection. "I object to your name being retained on the list of voters for the parish of *A.*, in the southern division of the county of *B.*" is sufficient notice within the Registration Act, s. 7., of objection to a vote for the county of *B.* *Lambert v. Overseers of St. Thomas*. Page 222

(f) Service of Notice of Objection.

1. An assistant overseer appointed 59 Geo. 3. c. 12., is an overseer within the meaning of the Registration Act, s. 13., so as to make valid a service on him of notice of objection. *Points v. Attwood*. 117
2. Service of notice of objection on overseers, not invalid, merely by reason that the notice was left at an overseer's place of abode 20 minutes after 11 p. m., on the 25th of August. *Points v. Attwood*. 117
3. The sufficiency of service of notice is a fact for the barrister whose decision is final. *Watson v. Pitt*. 73
4. What not a sufficient service of notice. *Watson v. Pitt*. 73
5. Personal service of notice good, though effected after 9 p. m. Per *Maule, J.* 75

(g) Remitting Case to Barrister.

The Court will not remit the case to the revising barrister for a further statement of facts, unless it is unable to see its way to a decision upon the case as stated. *Watson v. Cotton*. Per *Wilde, C.J.* 54, 55

(h) Appearance of Parties.

1. When respondent does not appear, and no notice has been served upon him of appellant's intention to prosecute, the Court will not postpone the hearing, unless it be shown that the respondent has acted with bad faith, or some other substantial ground, be shown. *Aldworth v. Dore.* Page 67
2. The Court will affirm the decision of the revising barrister with costs, when the respondent appears to support it, but the appellant fails to appear. *White v. Pring.* 141
3. Respondent on appearing is confined to the matter of appeal. *Palmer v. Allen.* 42
4. Although the respondent does not appear, the appellant will not have judgment without the Court hearing the grounds on which it is sought to reverse the decision of the revising barrister. *Pownall v. Hood.* 170

(i) Notice of Intention to prosecute.

Appellant when excused under 64th s. of Registration Act, as not having had reasonable time to give ten clear days' notice of intention to prosecute. *Palmer v. Allen.* 42

(k) Striking out of List.

If the case as transmitted to the Master is not duly signed by the revising barrister at the end of it, the Court in the absence of the respondent's counsel will strike the case out of the list. *Burton v. Blake.* 197, 198

(l) Reversal without Argument.

The Court on the motion of the appellant's counsel, will reverse at once the revising barrister's decision when the respondent's counsel states his inability to support it. *Jarvis v. The Town Clerk of Shrewsbury.* Page 182

(m) Ten Days' Notice.

When the Court has no jurisdiction to hear the appeal, for want of ten days' notice. *Aldworth v. Dore.* 67, and see 71 n.

(n) Setting down Appeal.

Appellant need not give respondent notice of the appeal having been set down for hearing; ten days' notice of his intention to prosecute, being all that is required. *Powell v. Caswell.* 141

(o) Restoring Appeal to the List.

Rule to restore an appeal to the list for argument, refused in a case where the decision of the barrister had been reversed without argument on the 12th November, there being nothing to show that the register had not been subsequently altered accordingly. *Powell v. Caswell.* 141

See p. 170.

(p) Paper Books.

1. If one party neglect to deliver his paper books, the other must do it for him, or the case will be struck out. *Shedden v. Butt.* 188
2. Paper books must be delivered to the Judges four clear days before

the first day appointed for hearing appeals, and the Court will not relax this rule unless a sufficient excuse be given for non-compliance. What is such an excuse. *Palmer v. Allen.* Page 1

(q) *Consolidated Appeals.*

The Registration Act, s 44., gives no jurisdiction to hear a consolidated appeal when the decision on one of the cases consolidated will not dispose of the rest, and the appeal in such case will be struck out of the list. *Prior v. Waring.* 45

QUALIFICATION.

A. In a Borough.

(a) *Freeman.*

A freeman excused from payment of poor rate on the ground of poverty not thereby disqualified as having received parochial relief, under 2 W. 4. c. 45. s. 36. *Mashiter v. Town Clerk of Lancaster.* 112

(b) *Nature of Premises.*

("Land distant from Building.")

1. Land at a distance from a building, in a borough, may (if both land and building be occupied for the proper period by the claimant, either as owner, or as tenant under the same landlord) be valued under 2 W. 4. c. 45. s. 27., together with the building, so as to make up

a borough qualification. *Collins v. Town Clerk of Tewkesbury.*

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See 158 (n).

("Other Buildings.")

2. Two rooms in a house, in which the landlord occupied a shop and parlour, but did not sleep, and whereof both he and the tenant of the two rooms had a key of the outer door, which had no other fastening than the lock. *Held*, a "building" within 2 W. 4. c. 45. s. 27. *Toms v. Lockett.* 19
3. A shed, when may fall within denomination of "building" within 2 W. 4. c. 45. s. 27. *Watson v. Cotton.* 53
See also Remarks on this head, 58 (n).
4. A brick-built stable, and hay-loft over it, had annexed, but at a lower elevation, another brick building, to which was again annexed an irregular wooden building divided into three compartments; each of these last, as well as each of the two brick buildings, opened into the same yard, but there was no internal communication between any of the erections. *Held*, the whole formed one continuous structure under one roof, and was a "building" within 2 W. 4. c. 45. s. 27. *Pownall v. Dawson.* 177
5. A coach house and stable (together of the yearly value of 10*l.*, separately not) had means of internal communication by windows in the partition separating the two, but no means of internal access

from one to the other. *Held*, a "building" within 2 *W. 4. c. 45. s. 27. Jolliffe v. Rice.* Page 90

(c) *Nature of Occupation.*

(*Co-occupation with Landlord.*)

1. Appellant occupied a counting-house in a house in which the landlord and six other persons occupied counting-houses; the outer entrance to the premises was closed at night by a gate, which the landlord's clerk, who resided on the premises for the purpose, always kept locked at night, except when the inmates of the counting-houses desired to come in, but the gate had no keyhole on the outside. *Held*, sufficient occupation as tenant, within 2 *W. 4. c. 45. s. 27. Downing v. Lockett.* 33

(*Separate Properties.*)

2. Under 2 *W. 4. c. 45. s. 27.* the value of land added to that of a house or building in itself insufficient, only gives a vote for the borough in which they are situate, when together the values are sufficient, and both properties are occupied by the claimant as owner or as tenant under one landlord. *Burton v. Overseers of Aston.* 143
See Collins v. Thomas. 219

(*Successive Occupation.*)

3. When appellant occupied in succession a house at Coleham, in the parish of St Julian, and a house at Butcher Row, in the parish of St. Alkmond, and the list stated his

qualification to be "house in succession," and in the fourth column were inserted the words "Butcher Row" only. *Held*, the Registration Act, s. 40., gave no power to amend by altering the qualification to "houses" and adding "Coleham" in the description of place, &c. *Onions v. Bowdler.* Page 59

(d) *Payment of Assessed Taxes.*

By 11 & 12 Vict. c. 90. no one is entitled to be registered as a voter for a borough unless on or before the 20th *July*, he shall have paid all assessed taxes which have become payable by him previously to the 5th *January* preceding. By 43 *Geo. 3. c. 161. s. 23.* the assessed taxes are payable, and are to be paid, quarterly; viz., on the 20th *June*, the 20th *September*, the 20th *December*, and the 20th *March*. By 48 *Geo. 3. c. 141.* assessed taxes are to be collected in equal moieties within 21 days after the 10th *October* and the 5th *April*, with a proviso that the Act shall not be construed to alter the times when the duties are payable under previous Acts. The quarter's house-tax due from the appellant on the 20th *December* was not demanded until the 11th *April*, and he did not pay it until the 30th *July*. *Held*, that a demand being unnecessary unless previous to levy for default of payment, appellant was not entitled to be registered. *Ford v. Smedley.* 203

(e) Non-payment of void Rates.

A scot and lot voter, not having paid before the last day of *July*, a poor-rate which is a nullity, as not having been allowed by two Justices, is not thereby disfranchised under 2 *Wil. 4. c. 45. s. 33. Fox v. Overseers of Shaston St. Peter.*

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See now 14 & 15 *Vict. c. 14.*

(f) Notice of Claim.

The revising barrister in dealing under the Registration Act, *s. 38.*, with a notice of claim inaccurately describing a qualification, is to consider whether the mistake ought to have been corrected under *s. 40.* if it had occurred in the voters' list; and if so, he is not to amend, but to decide that due notice has been proved to have been given. *Eaden v. Cooper.*

183

(g) Officer of Customs.

An extra or glut tide waiter is disqualified as an officer employed in levying or managing the customs, within 22 *Geo. 3. c. 41. s. 1. Pownall v. Hood.*

170

*B. In a County.**(a) Apportionability of Rentcharge.*

The owners in fee of a plot of land which was subject to a chief rent of 14*l. 1s. 7d.*, granted the fee simple in a portion of the land to ten persons as tenants in common, subject to the payment of 4*l. 5s.* as their proportion of the entire chief rent. The grantors cove-

nanted to pay their proportion of the chief rent, and to indemnify the grantees against all losses by reason of the non-payment of the residue thereof—viz. 9*l. 16s. 7d.*; and further covenanted that, in default of payment on their part, the grantees might distrain on the grantors' portion of the land, which was of sufficient value to meet the annual charge of 9*l. 16s. 7d.* *Held*, that the rent was apportionable; and that as the grantees could enforce contribution against the grantors for all beyond 4*l. 5s.* that amount only was to be deducted in estimating the value of their interests with respect to their claiming to vote for the county, and as the result was they had 40*s.* by the year, their votes were good. *Barrow v. Buckmaster.*

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(b) Apportionability of Interest on Mortgage Debt.

A. claims to vote for a county in respect of freehold land which was in itself worth 5*l. per annum*, but which was mortgaged, together with other lands, worth 50*l.*, belonging to him, for 300*l.*, and the interest on the mortgage debt was 15*l. per annum*, in the whole. *Held*, such interest was apportionable, and the claimant having 40*s.* by the year in respect of the land for (which he claimed which formed only an eleventh part of the whole property mortgaged), had a good vote. *Moore v. Overseers of Carisbrooke.*

233

(c) *Equitable Estate.*

In case, whether of a legal or an equitable estate, the Court looks, not at the actual legal charge, but at the substantial value which remains, after all the remedies are exhausted, to see whether a qualification to vote is conferred or not. *Barrow v. Buckmaster.* Page 242

(d) *Annual Value of Freehold.*

1. Thirty persons were seized in fee as joint tenants of a certain freehold property, which they let at a nominal gross rental of 75*l.* 15*s.*, but by agreement paid rates, taxes, and charges, which reduced the rent which a solvent tenant would give for the premises, to 63*l.* a year, and they also voluntarily paid for repairs, which for six years previously had cost 4*l.* a year on an average.

Held, the question whether the annual value of the freehold was reduced by such payments for repairs below 60*l.*, depended on the question, what rent could be obtained, if the occupying tenants had had to keep the premises in repair, which being found to be under 60*l.*, the property was worth less than 40*s.* by the year to each landlord, and therefore none of them had a vote in respect of it.

Hamilton v. Bass. 213

2. An owner, who by agreement with his tenant, pays out of the rent certain rates to which the tenant is liable in respect of his occupation, so as to receive, when

the deduction has been made, less than 40*s.*, and it is shown that, in the absence of such agreement, the rent paid would have been less by the amount of such rates, is not entitled to vote for a county. *Moorhouse v. Gilbertson.* Page 260

(e) *Dissenting Minister.*

A dissenting minister occupied as such, under a trust-deed, one of the trusts in which was "to permit the minister for the time being to reside on the premises without paying any rent," a house and garden worth more than 40*s.* *per annum*, the legal estate being in the trustees. *Held*, that the barrister having considered it to be proved that the minister held for life, he had an equitable freehold estate, and was entitled to vote. *Burton v. Brooks.* 197

(f) *Freemen Voting for.*

An Inclosure Act vested certain allotments of land belonging previously to the resident freemen of the borough of Leicester, in certain deputies in trust for such freemen, who were to elect the deputies. These trustees were empowered to apportion and divide the said allotments among such of the said freemen as should desire to become occupiers thereof at certain rents limited in the Act, to hold so long as each freeman so respectively becoming possessed "shall be willing to hold the same, and shall pay the annual rent, and conform to the regulations" of the

trustees, and they had further power to dispose absolutely of all or any part of the allotments with the consent of the major part of the freemen in public meeting assembled for that purpose.

Held, the allottees had estates, which might continue for life, and were not determinable at the will of the trustees, and that this was a freehold estate, and, in cases where it was of the value of 40s. above all charges, conferred a vote for the county. *Beeson v. Burton*.

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(g) *Land within Borough.*

The owner and occupier of freehold land within a borough, of the clear yearly value of 40s., who also occupies as tenant a house within the borough, at a distance from the land, has a vote for the county, whether the house be of sufficient value to confer the borough franchise or not. *Burton v. Overseers of Aston*.

143

(h) *Lunatic.*

Committee of a lunatic's estate, under letters patent, taking into his own hands and management a part of the lunatic's estate, has no right to vote, under 2 *Will.* 4. c. 45. s. 20. for the county, not being a tenant within that clause. *Burton v. Langham*.

78

(i) *Member of Building Society.*

A member of a building society, the annual value of whose premises purchased of the society in fee simple, is stated to be 8l., but

subject to a payment to the society of 15s. a month, by way of interest on mortgage to them, has not 40s. *per annum* over and above all charges, so as to be entitled to vote for the county under 8 *Hen.* 6. c. 7. *Copland v. Bartlett*.

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(k) *Mortgagor in Possession.*

1. Mortgagor of freehold premises in possession of the rents and profits, has no qualification for the county under the Registration Act, s. 74., unless he has 40s. by the year to expend thereout after deducting all interest on the principal money secured by the mortgage, when the time for repayment of such principal has expired, and that whether the payment of the interest be secured by the mortgage deed, or be a mere personal liability. *Lee v. Hutchinson*.
159
2. The declaration required under, 28 *Geo.* 3. c. 36. s. 6., that the claimant to a county vote has really and truly an estate of the clear yearly value of 40s. above all interest on mortgage debt, is to be construed thus; that if the party could not take the oath, he should have no vote, not that if he could take it, he should necessarily have a vote. *Dict. per Maule, J.* 164
See post 194.
3. Mortgagor in actual possession of a freehold estate of inheritance has no vote for the county in respect of it, unless it be of the annual value of 40s. beyond all

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charges, including interest on the mortgage debt. *Copland v. Bartlett.* Page 102

4. Mortgagor in possession has not a right to vote for a county, notwithstanding the Registration Act, s. 74., unless the quantity of his interest in the property is such as to satisfy 8. *Hen. 6. c. 7. Copland v Bartlett.* 102
5. A member of a building society purchased freehold land of the yearly value of 6*l.*, and mortgaged it to the building society for the amount of the purchase money, which they had advanced to him, as well as to secure 5*l. per cent.* interest upon such purchase money, and such said sum, not exceeding 2*s. 6d. per share per annum* on the three shares of which he was holder, for incidental expenses, as the society should fix. A power of sale was reserved in the mortgage deed to the society, in case the mortgagor neglected or refused to observe any of their regulations. In pursuance of one of those regulations, he paid 1*s. 6d.* weekly for each of the three shares, and out of these payments there was appropriated *per annum* 8*l. 18s.* in part liquidation of the principal, 2*l. 10s.* for interest, and 6*s.* for incidental expenses.

Held, that although the mortgagor was in actual possession of the rents and profits, he had no vote for the county, not having 40*s.* by the year within 8 *Hen. 6. c. 7. Beamish v. Overseers of Stoke.* 189

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"THE SAME ROOF."

The meaning of building under "the same roof" is not necessarily a structure under a continuous roof, but one in which there is no break; therefore buildings which are immediately contiguous, though with roofs at different elevations, fall within the words. *Pownall v. Dawson.* 180, 181.

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